90-580

No.

Supreme Court, U.S.
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CLERK

Supreme Court of the United States

October Term, 1990

Kondian R. Rajaram, Petitioner,

v.

International Typographical Union
(Currently known as "Printing, Publishing
& Media Workers Sector of the
Communications Workers of America");

Baltimore Typographical Union No. 12;

Sunpapers Chapel of
Baltimore Typographical Union No. 12;

Jack Jerome Poist;

Gary Kidwell; Respondents,

and

A.S. Abell Publishing Company, Defendant

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Petition for Writ of Certiorari

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Tel. (301) 563-0990
Non-Lawyer and
Pro Se Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. (a) Did a nationwide labor union, i.e., the defending party of a legal action, violate its members' Constitutional right of petitioning the state for redress (1) by maintaining a union by-law which openly and literally threatened its members, (who contemplated administrative charges or legal actions against their union or its subordinate jurisdictions without first exhausting union-required, years of time-consuming, and monetarily expensive, within-the-union appeal procedures), that the filing of such a charge or action against the union or its subordinate jurisdiction shall lead the filing member to summary expulsion from union membership and to consequent loss of employment under written or implied contract provisions existing--existing in

regard to expelled union members--between an employer and a subordinate jurisdiction of the union, (2) by retaining the power necessary to so expel a member and make him unemployed, and (3) by concurrently claiming that the union by-law, during 55 years (1931-1986), was meant neither to be enforced nor to be deleted from the union's law-book nor to serve as a deterrent against the filing of such a charge or action?

(b) Where a district court had personal knowledge that the threat contained in said union by-law, during said 55 years, had continuously and successfully prevented all of the estimated 80,000 union members, except the plaintiffs of two legal actions, from filing an administrative charge or a legal action against the union or its subordinates, did that district court err when it failed or refused to allow to the

union's one member, i.e., the only plaintiff of the legal action mentioned in part (a) above, a judgment that would have served as a punishment to the union, the union's subordinates, and an employer who co-operated with the union's subordinates in enforcing the union's said by-law?

2. (a) Where the agency Equal Employment Opportunity Commission-filed complaint (1) stemmed from a charge signed by a union member (not a party to the case), (2) mentioned the member by name, (3) charged the member's union for maintaining certain union by-law which, said agency alleged, (i) violated the member's Title VII of the Civil Rights Act of 1964, as amended, rights, and (ii) caused him to incur out-of-pocket monetary expenses, and (4) presented the member as the only victim (i) who caused

the filing of the complaint and (ii) to whom monetary compensation should be given by the union (A) for said by-law-caused violations of the member's said Title VII rights and (B) for the consequent out-of-pocket monetary expenses incurred by the member, did a district court err when it signed an order entering a consent agreement or decree which neither granted to the named union member the compensation requested for by the complaint, (which was never amended but was clearly indicating that said Title VII and the Labor-Management Reporting and Disclosure Act's 4-month limitations were violated by the union and its by-law), nor eliminated a conflict existing between said 4-month limitations and the union's said by-law?

(b) Did a new legal action, separate from the said agency-filed one, have to be filed for seeking the elimination of a

conflict existing between said 4-month limitations and the union's said by-law?

3. Did a district court err when it (1) denied progress to a legal action for 31 months starting from the date the action was initiated by a foreign-born, unemployed, and pro se plaintiff, (2) allowed a magistrate to consume an additional 19 months before filing his report in regard to the disposition of the entire complaint, (3) consumed a still additional 12 months before adopting the report which relied on many case laws that emerged from the nation's many different courts during the first 50 months starting from the date the action was initiated, (4) caused a resultant reversal of the direction of judgment, and (5) denied a substantial judgment to which the plaintiff was entitled were it not for the court-imposed 31-months long

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nd 19-months long denials of progress?

4. (a) Did a district court err when it, during the early stages of a first-filed federal action, (1) granted dismissal to one defending party, i.e., the only plaintiff's former employer who was a party to a subject unpublished and unenforced arbitration, without having dispositively ruled on the arbitration-related matters, said Title VII rights, and civil rights, (2) mentioned that the matters related to said arbitration, (whose official transcript's copy and contents were not available--not available until April of 1984--to the plaintiff when the first-filed federal action was initiated on January 4, 1980, and whose existence was neither mentioned nor implied by the plaintiff in any one of the 3 different versions of his complaint), were existing in the first-

filed federal action and in a companion second-filed federal action, (i.e., a class-action which (i) was originally filed in a state court in May 1984 by the plaintiff on behalf of himself and his 23 fellow employees, (ii) was seeking compensation for said 24 employees-sustained damages arising from (A) the aforesaid employer's failure or refusal to honor an award of the subject arbitration and (B) the employees' union entities' failure or refusal to enforce said award, (iii) was removed by the employer to the federal forum, and (iv) was assigned to the same district court), (3) dismissed the second-filed federal action in April 1985, and, at the last stages of the still pending first-filed federal action, (4) refused to take dispositive jurisdiction on the arbitration-related matters in regard to the then undismissed defending parties,

i.e., the plaintiff's union entities who were jointly a party to the arbitration?

(b) Where said district court had knowledge that in a then already concluded state court class-action, (i.e., a second companion action which was filed by the plaintiff on behalf of himself and his said 23 fellow employees in May 1984, was never removed, and was requesting the state court to enforce the subject award), the state court had dismissed the action in April 1986 on the claims that the arbitration-related matters (1) were then existing in the federal forum in a pending action and (2) were precluded in the state forum, did the district court err when (April 1987) it refused to take dispositive jurisdiction over the arbitration-related matters in regard to the then undismissed defending parties and the one already

dismissed defending party, i.e., the plaintiff's former employer, of the still pending first-filed federal action, (while being fully persuaded that the plaintiff, because of limitations, had no standing to file a new legal action on arbitration-related matters, not in the federal forum and not in the state forum), thus having neither the district court nor the state court to dispositively rule on the arbitration-related matters in spite of the fact that the plaintiff had filed a total of 3 lawsuits and waited for a period of time stretching from January 4, 1980 through April 16, 1987?

5. (a) Did a district court err when (April 1987) it dismissed state-law claims existing before it for trial along with undismissed federal claims just because those state-law claims were

remaining attached to said undismissed federal claims which, the district court branded, were insubstantial?

(b) Later did that district court err when (October 1989) it failed or refused to reinstate and/or remand said state-law claims, while, in some new and unrelated case laws (filed in 1989 but prior to October) of a circuit court, the same district court had been reversed and directed to consider such state-law claims on the basis of their merits?

6. (a) Where a petition for writ of error and relief from an existing judgment was timely filed, based on Rule 60, F.R.Civ.P., and a 1989 Opinion of the Highest Court, did a district court err when it denied the petition, ignored the Rule & the 1989 Opinion, and granted finality to its existing judgment?

(b) Was the act of not relying on said

1989 Opinion an error made by that district court which previously (1) denied progress to the same (then pending) case from the time of its filing on January 4, 1980 through July 27, 1982, (2) allowed a magistrate to deny progress to the case from July 27, 1982 through February 27, 1984, i.e., the date the magistrate filed his report in regard to the disposition of the entire complaint, and, (3) consequently, enabled the magistrate and his report to rely on many unrelated case laws--case laws filed by the nation's various different courts after 1980, including one 1983 opinion of a circuit court and one 1983 opinion of the Highest Court-- which were not available to rely on if a magistrate were to file his report during 1980?

(c) While enforcing the two denials of progress, discussed in Question No. 6(b) (1) & (2) above, did the district

court and/or the magistrate have an anticipation that at least some of the many unrelated cases pending during January 1980-February 1984 in the nation's various different courts will hopefully result in the filing of brand new case laws that would enable the magistrate and district court (1) to inject some matters related to a subject arbitration into the instant pending-but-progress-denied case, (2) to summarily dismiss most federal claims of the complaint, (3) to hold trial and dismiss the still open, but branded insubstantial, federal claims and the state-law claims remaining attached thereto, and, thus, (4) to direct the case towards a pre-meditated result favorable to defending parties?

7. (a) In regard to claims made on Title VII of the Civil Rights Act of 1964, as

amended, did a district court err when it relied on a 1983 opinion of a circuit court, while facts indicated that the circumstances of the case pending before the district court were not similar to the circumstances of the case that remained appealed to the circuit court?

(b) After said 1983 opinion was overruled by a 1989 Opinion of the Highest Court, did the district court err when it failed or refused to reverse its existing judgment? For what purpose does Rule 60, F.R.Civ.P., exist?

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I. REFERENCE TO THE OFFICIAL REPORTS

In The Instant Case B-80-0012:

Rule 54(b) dismissal, based on prior report and order (Appendix, 5a-28a), of defendant A.S. Abell Publishing Company ("A.S. Abell") was appealed; the United States Court of Appeals for the Fourth Circuit's ("Fourth Circuit") decision appears at Rajaram v. A.S. Abell Pub. Co., 782 F.2d 1036. Petition No. 85-1929 for certiorari was denied by this Court.

April 16, 1987 judgment (Appendix, 90a-134a) was appealed; the circuit decision is reported at Rajaram v. International Typographical Union, 852 F.2d 566. A petition filed on November 14, 1988 was denied by the instant Court.

October 11, 1989 denial (Docket Entry No. 245) was appealed; the circuit decision (Appendix, 2a-4a & 145a-146a) will appear at Rajaram v. International Typographical Union, 908 F.2d 967. The

instant petition is following.

In The Companion Federal Case B-84-2465:

Dismissal (Appendix, 135a-138a) was appealed; the circuit decision is reported at Rajaram v. International Typographical Union, 823 F.2d 548.

II. GROUNDS FOR COURT'S JURISDICTION

On June 20, 1990 the fourth circuit affirmed (Appendix, 2a-4a) on the reasoning (Appendix, 90a-132a) of the district court. Rehearing was denied on July 13, 1990.

Jurisdiction to review a circuit court's decision by writ of certiorari is conferred on this Court by 28 U.S.C. Sections 1254(1) and 1651(a).

III. CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Constitutional Provisions

Amendment V:

> No person shall .... nor be deprived of life, liberty, or property, without due process of law; ....

Amendment XIV:

> .... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes

28 U.S.C. Sections 1254(1), 1331, 1343, 1651(a);

29 U.S.C. Sections 185, 411, 412, 415;

42 U.S.C. Sections 1981, 1985, 1986, 1994, 2000e, 2000e-2(a) and 2(c)(2), 2000e-3(a);

42 U.S.C. Section 2000e-5(a), 5(b), 5(f)(1), 5(f)(3), 5(f)(4), 5(f)(5), 5(g), 5(j);

42 U.S.C. Section 2000e-10.

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23, 54(b), 55 [(a) & (b)], 56 [(a), (c), & (d)], 60, and 72(a).

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Title 5: Article 5-101;

Title 12: Article 12-303.

IV. A CONCISE STATEMENT OF THE CASE:

Facts, Material To Set-Up One Chronological Sequence Of The Events, To Draw For Each Question From, And To Lead To The Consideration Of The Questions Presented

The instant case, filed pro se on January 4, 1980, listed all opposing entities except A.S. Abell, because a prior EEOC-filled charge form did not contain A.S. Abell. No mention of a subject unpublished arbitration was made.

Long after 1978, petitioner

discovered that respondents' attorney Mr. Rubenstein had filed and dismissed Case N-78-455 (Baltimore Typographical Union No. 12 v. The A.S. Abell Company, N-78-455, [D.Md. 1978]) in this district, seeking enforcement of the subject award. Mr. Rubenstein never explained whether and/or how his complaint in Case N-78-455 got settled. On September 7, 1977, the arbitrator ruled that the petitioner and 23 fellow beneficiaries be allowed to continue in their job-status as long as they wanted to continue.

Assisted by Mr. Rubenstein, respondent International Typographical Union ("ITU") filed a timely answer but other respondents filed neither a timely answer nor an untimely answer nor a defense of any other type. In April 1980, 4 default orders were entered by the clerk.

Until July 26, 1982, district court

allowed no progress to the case, thus keeping the petitioner in an illusion that his pro se complaint was accepted; on July 27, 1982 the court referred the complaint to Magistrate Smalkin who discovered that the complaint should be dismissed for prolixity.

In September of 1982, petitioner found counsel who filed an Amended Complaint. On January 20, 1983 counsel filed a 16-count Second Amended Complaint and included A.S. Abell as 6th defendant. Instant petition is stemming from said Second Amended Complaint.

On October 18, 1983, the magistrate recommended (Appendix, 5a-26a) that A.S. Abell be interlocutorily dismissed; the court complied on November 6, 1983 (Appendix, 27a-28a).

During October 18, 1983-November 6, 1983, discovery papers were filed by counsel and denied by court in regard to

A.S. Abell; limited discovery from the respondents was allowed.

During 1983-early 1984, respondents provided discovery documents but not a copy of the subject arbitration's transcript, thus leading the petitioner's counsel to fail to take exceptions to the recommendation of October 18, 1983.

The complaint's all 3 versions alleged violation of petitioner's civil rights and other non-arbitration rights. All attempts to obtain a copy of the transcript failed until early 1984.

On February 27, 1984, the magistrate filed his second report (Appendix, 29a-87a) relying on many case laws then available, including DelCostello v. International Brotherhood of Teamsters, 103 S.Ct. 2281 ("DelCostello-1983") and Adams v. Proctor & Gamble Mfg. Co., 697 F.2d 582 ("Adams-1983"). He recommended that claims related to Title VII of the

Civil Rights Act of 1964, as amended, ("Title VII") and many federal claims (11 of the 16 counts) be dismissed, based mainly on Adams-1983 and DelCostello-1983. Both sides took exceptions. On February 15, 1985 the court adopted the entire report. (Appendix, 88a-89a).

In April 1984, while still checking the respondents-provided documents page-by-page, petitioner found a tip leading to National Labor Relations Board ("NLRB"); the first copy of subject arbitration's transcript was obtained during April-May of 1984.

In May 1984 petitioner filed 2 class actions on behalf of himself and 23 fellow employees who, in July 1978, were forced by A.S. Abell to resign.

In one action, petitioner sued A.S. Abell and requested a state court to confirm the subject award. In the other, he sued A.S. Abell, its officers, the

respondents & their officers, and requested the state court to allow compensation to the 24 beneficiaries for damages inflicted as a result of failure to honor & failure to enforce the award. The second action was removed in June 1984 by A.S. Abell to federal forum, numbered as B-84-2465, and assigned to this district court (Judge Black).

In B-80-0012, on the basis of the NLRB-provided copy, on October 12, 1984 petitioner's counsel filed a motion requesting to vacate the court's order which dismissed A.S. Abell from the case.

The magistrate filed third report, dated December 14, 1984, recommending that A.S. Abell be given Rule 54(b) dismissal. In spite of the exceptions, the court adopted the third report on February 13, 1985.

On February 15, 1985 that court adopted (Appendix, 88a-89a) the second

report filed on February 27, 1984. (Appendix, 29a-87a).

On March 28, 1985, in B-84-2465, the magistrate recommended that the subject arbitration-related matters were or should be an integral part of Case B-80-0012, the Cases B-84-2465 and B-80-0012 should have been consolidated, one arbitration cannot be litigated in two lawsuits, and, hence, B-84-2465 should be dismissed. (Appendix, 135a-136a). On April 4, 1985, district court dismissed B-84-2465 (Appendix, 137a-138a), no reason for not consolidating being given.

On April 23, 1986, state court dismissed the subject award-confirmation action. (Appendix, 139a-144a).

In April 1987, in the then only pending action B-80-0012, district court held a trial on the 5 undismissed counts which, it branded, were insubstantial. On April 9, 1987, petitioner's counsel

fully briefed the district court that (1) Case B-80-0012 was the only pending case to get a judgment in on arbitration matters, (2) because of limitations, petitioner will be barred from filing a new federal case or state case to assert his claims on arbitration matters, (3) no law-enforcement authority (neither federal nor state) had dispositively ruled on the arbitration matters, and (4) in B-80-0012 & B-84-2465 the magistrate had reported that the arbitration matters were an integral part of Case B-80-0012. (Appendix, 147a-152a).

On April 15, 1987, the district court pronounced that arbitration matters were not before it. (Appendix, 90a-132a, at 110a). On April 16, 1987, it dismissed the Second Amended Complaint in entirety (Appendix, 133a-134a) and the state-law claims.

On June 12, 1989 instant Court issued

an opinion in Martin v. Wilks, 109 S.Ct. 2180, contradicting with Adams-1983. On October 2, 1989, petitioner's counsel filed a petition for writ of error and relief from existing judgment dated April 16, 1987, based on Rule 60, F.R.Civ.P. and Martin. District court denied the petition but granted finality to its judgment dated April 16, 1987.

Because of many commitments, the counsel did not wish to pursue.

Notice of appeal was filed. The fourth circuit presented 6 questions to be answered and filed as pro se appeal brief. The questions permitted to present petitioner's entire ordeal. (Question No. 4:

> Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?)

Instant petition, hence, raises his ordeal in part and full. If this petition to review the fourth circuit's

decision is granted, petitioner will retain a member of the instant Bar for briefing and oral argument. Petitioner respectfully petitions that a writ of certiorari issue to the fourth circuit.

Facts Material To The Consideration Of Each Of The 7 Questions Presented

1. During 1931-1980, ITU maintained a by-law threatening its members with expulsion from union membership and all consequences existing in written or implied contracts prevailing between a subordinate of ITU and an employer-company. The by-law is quoted as:

> Sec. 43. In no case shall a member appeal to a civil court or any other agency for redress from an action by the union until he has exhausted his rights of appeal under the laws of the International Union. Any member who violates this section shall be liable to summary expulsion by the Executive Council.

The threat was attached to a member's act of appealing to an agency or

court for redress by by-passing the ITU-required appeal procedures. ITU's requirements ignored the time and money involved while exhausting the requirements. The magistrate stated that petitioner needed 15 months to exhaust the requirements. (Appendix, 58a.)

The requirements were of 6 steps, years of time-consuming, and monetarily very expensive. ITU always retained a power to summarily expel any member who, in its judgment, violated its law.

The quoted by-law was enforced in a court action in Seago et al v. Phoenix (Arizona) Typographical Union, Local No. 352 et al, No. CIV 77-979 PHX WPC (an order therein, dated the 1st day of October, 1979), leading to dismissal of the action for the plaintiffs' failure to exhaust ITU's requirements, prior to filing the action. (In August 1978, the petitioner completed the requirements.)

During 1931-1980, nearly each year ITU held convention of hundreds of delegates of its subordinates, gathering at a certain location from various parts of the United States. During the convention all changes in, additions to, and deletions from, the then effective ITU law-book were acted on. The above quoted by-law was not affected. As a result of an EEOC-filled charge form signed by petitioner on August 30, 1978, and the resultant action JH-79-1826 (EEOC v. International Typographical Union, et al, JH-79-1826 [D.Md. 1980]), the quoted by-law was modified in 1980 by an order of Judge Joseph Howard, by adding the following paragraph:

> **The preceding paragraph does not apply to the initiation of any proceedings before a Court or an agency charging a violation of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex and national origin.**

The amended by-law eliminated a conflict existing with the spirit of Title VII, but EEOC failed to have the conflict with Labor-Management Reporting and Disclosure Act's ("LMRDA") 4-month limitations eliminated.

Because of strict limitations before filing a case or charge, this by-law effectively and permanently prevented each of an estimated 80,000 ITU-members, except Walter Seago & his fellow-member plaintiffs of Phoenix, Arizona, and this petitioner, from suing or charging ITU or its subordinates--a claim not challenged by respondents or A.S. Abell until current date.

Respondents enforced the by-law during 1974-86 on this petitioner. A.S. Abell, i.e., petitioner's employer during August 1974-July 1978, cooperated with the respondents in enforcing said by-law in the form of written and/or implied

contracts and employer-influence.

Being directed by petitioner to the foregoing facts, the district court allowed no award to the petitioner.

2. Petitioner exhausted the ITU's requirements in August of 1978. The magistrate stated that petitioner needed 15 months. (Appendix, 58a.)

Prior to signing the EEOC-filled charge, petitioner orally explained the difficulties and problems he faced and coming from the respondents & A.S. Abell. Apparently EEOC gleaned just that much of his problems and difficulties, which EEOC wished to deal with. EEOC filled a charge and asked the petitioner to sign it or not sign it; petitioner signed it on August 30, 1978 for lack of a third choice such as putting facts in proper spaces, adding additional facts and parties, and deleting what he would not

like in the form. (He was not told that A.S. Abell was being left out; he did not have opportunity to check the form. The magistrate stated that the charge form was not properly filled if A.S. Abell and all respondents were intended to be the defending parties at EEOC. Appendix, 84a-87a.)

At the end of 1978, EEOC made a determination stating that the charge was, in part, true; it invited the parties to a conciliation. Petitioner agreed to participate. Respondents and Mr. Rubenstein refused to accept the ITU by-law as violative of any public law; conciliation attempts failed. EEOC filed an action (JH-79-1826) on September 28, 1979 against two respondents, i.e., ITU and Sunpapers Chapel of Baltimore Typographical Union No. 12 ("Sun-Chapel"). (The complaint filed therein was never amended. Petitioner was

neither a party nor summoned therein.)

The complaint mentioned the petitioner by name, allged him as a victim of ITU's said by-law, alleged that his Title VII rights were violated, stated that out-of-pocket monetary expenses were incurred by petitioner as a result of said violations, and requested monetary reimbursement from respondents to petitioner. The complaint also directed one's attention to the fact that said ITU by-law was violating the 4-month limitations mandated by LMRDA.

Judge Howard signed an order, dated June 18, 1980, which entered a consent decree presented--presented without the knowledge of your petitioner in regard to the contents and the date of filing--by EEOC and defending parties. The decree ignored the petitioner, his expenses, and the limitations mandated by LMRDA.

3. Based on an EEOC-issued right-to-sue letter dated October 25, 1979, and, during the following 40 days having failed to find an attorney who would like to represent him, on January 4, 1980, petitioner filed the instant Case JH-80-0012 pro se. The complaint stated that petitioner was an immigrant compelled in July of 1978 by A.S. Abell to resign, and typographically unemployed. The case remained assigned to Judges Jones (a few minutes), Howard, Ramsey, and Black, but no action was taken until July 27, 1982.

On July 27, 1982, the trial judge Honorable Walter Black, referred the pro se complaint to Magistrate Smalkin. The magistrate filed a report on February 27, 1984, recommending a method for the disposition of the entire Second Amended Complaint. (Appendix, 29a-87a.) The court adopted the entire report on February 15, 1985. (Appendix, 88a-89a.)

Between January 4, 1980 and February 27, 1984, many case laws emerged from the various different courts, including Adams v. Proctor & Gamble Mfg. Co., 678 F.2d 1190 ("Adams"), Adams-1983 (which was applied to summarily dismiss Title VII claims), and DelCostello-1983 (which was applied to summarily dismiss 11 of the 16 counts of the Second Amended Complaint). These case laws were used to aim the instant case towards a result favorable to the respondents and the defendant, and towards a denial of substantial judgment to the petitioner.

The undismissed counts were deemed insubstantial in terms of compensation to the petitioner. The state-law claims, (1) related to the subject unpublished and unenforced arbitration award and (2) previously admitted by the court as litigated before it, had to be attached to the undismissed federal claims.

4. On November 6, 1983 district court gave dismissal to A.S. Abell without making any dispositive ruling on the subject arbitration matter, Title VII claims, and civil rights claims. (Appendix, 5a-28a).

Being unpublished, the transcript of the arbitration was not available to the petitioner for inspection and copying, even though the petitioner attempted to obtain it from A.S. Abell, the union entities, Arbitrator Myron L. Joseph, and the library. (The court and magistrate chose to blame the petitioner for not exercising still more careful efforts to obtain that hidden document, but they did not choose to reprimand or punish the parties of the arbitration for having the document unpublished and unavailable to the 24 beneficiaries for whose sake the arbitration proceedings were held.)

In April 1984, a tip found in the

respondents-provided limited-discovery documents led the petitioner to NLRB in search of the transcript; the petitioner obtained one copy thereof in April and later of 1984. (Because of the huge volumes of the transcript, NLRB requested long period of time to copy.)

In companion case B-84-2465, the magistrate and court mentioned that the arbitration matter was or had to be or should have been or could have been a part of the instant case (Appendix, 135a-138a). On April 4, 1985, district court dismissed case B-84-2465.

At the time of the trial in April of 1987, district court had personal knowledge that in a second companion case, filed in a state court as class action and never removed, petitioner requested that court to enforce the award, and that court on April 23, 1986 dismissed the case on the grounds that

the arbitration matter was existing before a federal court and, hence, was precluded in a state court. (Appendix, 139a-144a). (Maryland's legislative mandate contained no provision for dismissing an action seeking confirmation of a final and unchallenged arbitration award.) [Maryland Rules E1 and E2. Annotated Code of Maryland, Courts and Judicial Proceedings, Title 3, Article 3-223(c)].

During the trial, district court was fully briefed that as of April 1987 no law-enforcement authority had ruled dispositively either on the award or the damages arising from not honoring the award. (Appendix, 147a-152a). Yet, that court stated that the arbitration matter was litigated in a state court, and was not before it in the instant case. (Appendix, 110a).

The result was that neither the state

court nor district court dispositively ruled on the award and the damages caused on the petitioner & his 23 fellow employees as a result of failure to honor the award and failure to enforce the award, even though petitioner had filed three separate lawsuits and waited longer than seven years (from January 4, 1980 through April 15, 1987).

5. During trial in April of 1987, district court dismissed the state-law claims related to the subject arbitration on the grounds that these claims did not have enough standing in the federal forum because the 5 undismissed federal counts remaining open for trial were worth dismissing for the reason that they were, in its judgment, insubstantial.

In the papers filed below, the petitioner presented that in Shoup v. Bell & Howell Co., 872 F.2d 1178, and in

Childers v. Chesapeake & Potomac Telephone Co., 881 F.2d 1259, the fourth circuit directed that state-law claims existing in the federal forum should be considered on the basis of their merits. (In Shoup, the court [Judge Walter Black], whose earlier judgment had been appealed, was reversed.)

6. On October 2, 1989, petitioner's counsel filed with the district court a petition for writ of error and relief from the existing judgment dated April 16, 1987, based on Rule 60 and Martin.

Martin was related to the status of a non-party's Title VII rights, where the non-party neither received summons to appear in the case nor had his day in the court. It was the understanding of the petitioner that Martin overruled and or invalidated Adams-1983.

District court did not mention that

Martin was irrelevant to petitioner's Title VII claims. District court applied finality to its existing judgment; it ignored Martin and Rule 60.

The district court, i.e., Judges Howard, Ramsey, Black and (then magistrate) Smalkin, earlier, delayed the progress of the instant case through February 27, 1984. (In his pro se appeal brief, at pages 55, 59, and 60, petitioner made specific statements that requested the involved 3 district judges and the magistrate to individually provide a letter stating his reason(s) for the delay. At the time of personally filing his pro se brief in the fourth circuit in Richmond, Virginia, petitioner concurrently mailed one copy of his brief to each of these 4 judicial authorities. None responded.) None has given a justification for applying the case laws emerging as late as middle of

1983 to the instant case which was filed on January 4, 1980.

Many case laws, including Adams-1983 and DelCostello-1983, relied on by Magistrate Smalkin, were not available to a magistrate during 1980.

These facts lead towards the direction that, if its pleasure be so, the district court would postpone the progress of a pending case even for years and wait for the filing of an opinion by a different court in a particular unrelated case; if its pleasure be to the contrary, the same district court would ignore an opinion newly filed in an unrelated case, Martin for one example.

The foregoing facts lead to one conclusion, i.e., some unrevealed, vague, & secret, information still remains with Judges Howard, Ramsey, Black, & Smalkin.

7. In his report dated February 27,

1984, in regard to Title VII claims, Magistrate Smalkin stated that the circumstances of the instant case were similar to those existing in Adams-1983. He recommended that petitioner's Title VII claims be dismissed even though petitioner was neither a party to nor summoned to appear in EEOC action JH-79-1826. (Appendix, 31a-35a). District court adopted the report in entirety (Appendix, 88a-89a), relying mainly on Adams-1983 (and DelCostello-1983).

In argument No. 7, petitioner will explain why instant case was similar neither to the facts found in Adams nor to the facts found in Adams-1983.

On June 12, 1989, the instant Court issued its opinion in Martin. Petitioner and his counsel perceived that the holding in Martin overruled the holding in Adams-1983, and, in the interests of

justice and fairness to a suffering & unemployed citizen, finality should not block the provisions existing in Rule 60 and Martin.

A petition for writ of error in and relief from district court's April 16, 1987 judgment, in regard to Title VII claims of the petitioner, was filed by petitioner's counsel on October 2, 1989. That petition was based on Rule 60, F.R.Civ.P., and Martin which established guidelines for circuit courts in regard to Title VII claims of a non-party who was neither summoned to appear in a case nor was given his day in the court.

Said petition was filed with the district court in a timely way, based on all petitioner-understandable angles of the interpretation of Rule 60, F.R.Civ.P. The district court granted finality to its April 16, 1987 judgment, but failed or refused to reverse the judgment. The

district court did not say that (1) Rule 60 and Martin were irrelevant, (2) the filing of the petition was barred, and/or (3) the filing of the petition was untimely. Hence, that court failed to attach a purpose to Rule 60's existence.

V. BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

28 U.S.C. 1331; 28 U.S.C. 1343;
29 U.S.C. 185; 42 U.S.C. 1981;
42 U.S.C. 1985; 42 U.S.C. 1986;
42 U.S.C. 1994; 42 U.S.C. 2000e;
42 U.S.C. 2000e-2(a); 42 U.S.C. 2000e-5;
42 U.S.C. 2000e-10.

VI. ARGUMENT

1. Petitioner never challenged that a union member had to promptly exercise his civil rights in courts or agencies by ignoring his union's adverse law.

In practicable terms, however, where,

as here, ignoring the union law meant a fear of expulsion from membership and loss of employment (1) under written and/or implied provisions existing between a union entity & the employer of the member and (2) under employer-influence, ignoring the union law meant a tendency for the employer to act in favor of the union hierarchy.

Any authority existing within the United States owed to the United States a moral obligation, if not a mandatory legal obligation, of maintaining only such laws which were consistent with the laws of the United States. A labor union could not claim that its law, if found inconsistent with the laws of the United States and/or its subordinates, may be ignored; because such a claim (1) assumes that every individual can correctly and readily interpret the public laws, (2) puts on a member of the public the burden

of interpreting the laws of the United States and its subordinate jurisdictions, (which is a right vested in the several courts of the land, not in the public), and (3) fails to admit that if an individual failed to properly and promptly interpret and/or failed to notice the existence of inconsistency--like what happened during 1931-1986 to the estimated 80,000 members of ITU--the laws of the United States and its subordinates would be superseded by the union law for practicable purpose.

By observing silence to petitioner's claim that, during 1931-1986, no third lawsuit was ever filed by ITU-members against ITU or its subordinates, the respondents and A.S. Abell have admitted that the said ITU by-law prevailed and superseded public laws until 1986.

Members of ITU knew that there existed no funds--neither union funds nor

public funds--to prevent the insolvency of a union member if he became unemployed as a result of promptly exercising his civil rights by ignoring his union's law.

It is unconstitutional for a labor union to claim that its members should be prepared to become unemployed and to face insolvency as a price for challenging that union's law in a court or agency.

The fear created by the ITU by-law was endless in consuming time, and, during 1931-1980, continuously prevented about an estimated 80,000 members (except Walter Seago & his fellow members of Phoenix, Arizona, and the instant petitioner) from seeking a court or an agency. Until current date, respondents and A.S. Abell neither challenged this statement nor presented documentary evidence to disprove this statement.

It was unlawful for the respondents to keep their appeal procedures so

expensive, in terms of both monetary and time consumption, that, (so far as their membership's grievance was concerned), they enjoyed nearly litigation-free and charge-free life for 55 years.

An assessment of the motive inherent in a union by-law should be made on the basis of history rather than the claims or interpretations provided by the union's officers and attorneys.

In the courts below, respondents had pleaded that the quoted ITU by-law was never intended to be enforced, but such statements were not true in view of an order in Seago, which dismissed Walter Seago's action merely because Walter Seago et al had failed to exhaust ITU-required within-the-union grievance procedures before filing their case.

If respondents indeed did not need said by-law, as they would ask the instant Court to assume, they could have

deleted it from law-book right in 1931.

Petitioner claimed and claims that respondents used the by-law for the purpose of nullifying their members' Constitutional right to petition the state for rederss; his claim was augmented on June 18, 1980 when the consent decree of Case JH-79-1826 failed to eliminate the by-law's conflict with LMRDA's 4-month limitations.

If respondents indeed did not mean violating the laws of the United States, they could have voluntarily offered to eliminate the conflict existing between their by-law and the 4-month limitations mandated by LMRDA.

During 1931-1986, the ITU members must have failed to promptly exercise their civil rights out of said fear of expulsion and consequent possibility of unemployment, not out of unwillingness to exercise their Constitutional and/or

civil rights, because United States has been and is a land of the free people.

The facts that (1) the by-law existed in tact during 1931-1980, and violated on its face the provisions of Title VII and LMRDA, (2) prevented almost all members, during this period of time, from seeking a court or an agency, and (3) the by-law's nature of violating LMRDA survived the 1980 amendment, mean that the respondents used the by-law as a tool to escape from being sued or charged rather than to enforce the by-law or to expel a member.

It was unjust for a court to fail to punish respondents and their accomplice, and to fail to award the petitioner who brought these facts to the attention of law-enforcement authorities.

2. It was improper for EEOC to fill a charge form which it later required be

signed or not signed by a charging party.

It was unjust for a magistrate to insist that an EEOC charge form, signed by a non-lawyer, foreign-born, and pro se charging party, be perfect in every required detail and in every space assigned for individual details.

It was unjust for EEOC's consent decree to ignore the petitioner and the expenses incurred by him, while EEOC's complaint had demanded that petitioner be monetarily reimbursed for the violations of his Title VII rights and the monetary expenses incurred by him as a result of said violations. If EEOC did not mean abandoning the petitioner's interest, it could have mentioned in its decree that the charging party may proceed to assert his claims in a private action.

On its face, the EEOC-filed complaint clearly implied that ITU's by-law violated two separate pieces of

federal law, i.e., Title VII and LMRDA's 4-months limitations.

On June 18, 1980, Judge Howard knew that petitioner's pro se complaint, remaining assigned to him in JH-80-0012, contained facts indicating that petitioner was detained for longer than four months before he approached the EEOC in August of 1978. He also knew that the EEOC charge form, attached then as an exhibit, carried evidence that it was not prepared by a non-lawyer layman. He also knew that EEOC's conciliation efforts failed due to failure or refusal of respondents and their attorney Mr. Rubenstein to conciliate, whereas this petitioner had agreed to conciliate.

He knew that petitioner's Title VII rights were violated by the respondents, that petitioner had spent huge sums of money to satisfy the demands of ITU by-law before he could approach EEOC and the

court, and that EEOC's complaint requested reimbursement to petitioner. He knew that about 6 steps of internal appeal procedures were required by ITU's by-law and there was no practicable way to move through those 6 steps within a lapse of 4 months. (It took at least 15 months of time. Appendix, 58a.)

It was unjust for a district court to sign an order that entered a consent agreement or decree, prepared and filed without the only charging party's knowledge, which (1) failed to compensate that charging party, i.e., the petitioner, and (2) failed to rectify a still existing conflict with LMRDA. To be just, Judge Howard had to insist that first charging party be monetarily reimbursed in an out-of-court settlement or the case be scheduled for trial and the only charging party be summoned to appear in defense of his interests.

It was not fair for a district judge to wait for a future case to be filed, seeking the elimination of a conflict between a union by-law and the 4-month limitations mandated by LMRDA. Justice suggested that, when the judge was rectifying one type of conflict, he also should use the opportunity to rectify every other conflict with federal law.

3. Especially where the plaintiff was a foreign-born, unemployed, and pro se litigant, it was unjust for the district court, i.e., Judges Howard, Ramsey, and Black, to deny progress to the case from January 4, 1980 through July 27, 1982. During this period of time, just what these three judges were waiting for has not been revealed until the date of filing the instant petition. Rule 1, F.R.Civ.P., reads as follows:

These rules .... shall be construed to

> secure the just, speedy, and inexpensive determination of every action.

It was unjust for the district court to allow, and for the magistrate to consume, the time from July 27, 1982 through February 27, 1984 just for filing a recommendation to dispose off the case. Rule 72(a), F.R.Civ.P., reads:

> A magistrate to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter.

It was unjust for the district court to consume time from February 27, 1984 through February 15, 1985 before adopting the magistrate's report.

It was unjust for the magistrate to file a report that relied on case laws emerging in as late as middle of 1983 to this case which was filed on January 4, 1980. It was unjust for the district

court to adopt that report. (Instead, the magistrate had to file a report shortly after July 27, 1982, relying only on those case laws which existed on and before January 4, 1980, and the court had to adopt such a report in entirety.)

It is clear that denial of judgment to petitioner had to be impossible if a magistrate had filed his report in 1980.

It was unjust for the magistrate to recommend that 11 of the 16 counts of the complaint be summarily dismissed, thus leaving only the state-law claims and the allegedly insubstantial federal claims for trial. It was unjust for the district court to adopt the magistrate's said report, thus limiting the trial to only the allegedly insubstantial claims and the court-injected state-law claims.

It was unjust for the district court to assume that petitioner attached some state-law claims to insubstantial federal

claims which that court took remaining open for trial. Petitioner attached no state-law claims to his 16-count Second Amended Complaint which included both substantial and insubstantial federal claims. (State-law claims were injected into the case on the recommendation of the magistrate's report which was adopted by the district court.)

It was unjust for the district court to consume time from January 4, 1980 through April 16, 1987, i.e., seven years, three months, and twelve days, just for the purpose of finding that the case should be dismissed. Petitioner knows of neither a statute nor a rule that would have permitted this long period of time; petitioner believes that district court had motives not yet revealed.

This belief of the petitioner is augmented by the fact (1) that

DelCostello-1983, i.e., a case originally filed several years prior to January 4, 1980, was the main case law relied on by the district court to summarily dismiss 11 (the so-called substantial) counts of the 16-count Second Amended Complaint, and (2) that Bernard Wolf Rubenstein, Esq., i.e., the counsel of respondents in almost all legal and administrative matters during 1974-1990, was the defense counsel in DelCostello v. International Brotherhood Of Teamsters, 510 F.Supp. 716, at 717 (D.Md. 1981) from the time of filing on March 16, 1978 through the date the case was decided in June of 1983 by the instant Highest Court.

The final result of Case B-80-0012 would have been entirely different and favorable to petitioner, if the case had been assigned in 1980 to a magistrate with instructions that he file his final report during 1980.

4. It was an error to dismiss A.S. Abell, without making dispositive ruling on the arbitration, Title VII claims, and civil rights, because (1) A.S. Abell was the employer functioning under both written and implied contracts whose counter-parts were the respondents, (2) A.S. Abell was closely linked with the respondents in the alleged events, and (3) most of the alleged events took place on A.S. Abell's premises.

District court knew that petitioner was a foreign-born, unemployed and non-lawyer individual. It was erroneous to blame the petitioner for not discovering an unpublished and hidden transcript until April of 1984. A proper logic would have been to suspect the parties' sincerity, because these parties had the arbitration transcript unpublished, while they had the ability to have it published. (Transcripts related to a

number of irrelevant and different matters arbitrated between A.S. Abell and the respondents were published and readily available in the law library.) The district court did not whisper a single word that none of the 3 versions of the complaint made mention of an arbitration. District court had to find that it was wrong for A.S. Abell and respondents to keep hiding a transcript from its beneficiaries.

The fact that a tip found in the respondents-provided limited-discovery documents led petitioner in April 1984 to NLRB in search of the transcript meant that, if the petitioner had not found that tip, he could not have obtained a copy of the transcript even in April-May of 1984. To keep a document hidden that tightly was wrong.

If (1) the complaint existing in Case B-84-2465 existed in Case B-80-0012 also,

and if (2) B-84-2465 should have been consolidated with B-80-0012, then (3) why was B-84-2465 dismissed, and (4) how did the complaint existing in B-84-2465 vanish during the trial held in B-80-0012? Neither the magistrate nor the district court ever gave an answer to these questions.

Was the complaint existing in B-84-2465 removed by A.S. Abell from the state forum merely for the purpose that it could not be dismissed there, whereas the federal court functioned as a suitable forum to shop for and to have the complaint easily dismissed?

In April of 1987, during the trial in B-80-0012, district court was fully briefed that the state court, on April 23, 1986, dismissed the award-enforcement case, and that in respondents-filed federal case N-78-455 the respondents themselves dismissed it without providing

explanation as to the demands of the award, how they were met, when they were met, by whom they were met, and the dates and figure and individual names involved. The court was further briefed that no law-enforcement authority, as of April 9, 1987, had dispositively ruled on any aspect of the arbitration.

Then the logic was that, in the interests of justice, the arbitration-related matters had to be dispositively ruled on in the instant and only pending Case B-80-0012. District court was aware that after B-80-0012 gets finally decided by it, petitioner would have no standing to file a new case, neither in the federal forum nor in the state forum, for reasons of limitations.

At the end of the trial, district court was aware that, as of that date, not even one aspect of the matters related to the arbitration remained

dispositively ruled by: (1) Judge Northrop in N-78-455, (2) NLRB, (3) instant district court in B-84-2465, (4) state court [Circuit Court For Baltimore City], (5) instant district court in B-80-0012, or (6) any other law-enforcement authority. On April 15, 1987, it was unjust for the district court to pronounce that:

> The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not before this Court." (Appendix at 110a).

It was unjust to say that the arbitration matters were existing in B-80-0012 only during the early stages of the case, while the two companion cases needed justification for getting dismissed, but not for the purpose of dispositive ruling during the trial held in B-80-0012.

These facts boil down to only one

conclusion, i.e., the district court, state court, and defending parties of the three lawsuits, acted in collusion to have the three lawsuits dismissed, one at a time, without providing relief to the petitioner and his 23 fellow union-members on the subject arbitration.

5. If the state-law claims did not have enough standing in the federal forum, then the district court was obligated to remand them to a state court. District court gave no support for dismissing these state-law claims.

In Shoup and Childers, the fourth circuit had then freshly released a directive that state-law claims, existing in the federal forum, should be considered on the basis of their merits; Shoup was previously heard by the instant district court, and the circuit court reversed this same district court. Under

the circumstances, district court had only one correct direction to take, i.e., considering the state-law claims on the basis of their merits. It was unjust for the district court to ignore its higher authority's directive. On April 15, 1987, the district court was unjust when it pronounced that:

> "The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not before this Court." [Appendix at 110a].

6. It is unchallenged that in case JH-79-1826, the petitioner was neither a party nor was summoned to appear nor was given his day in the court.

After Adams-1983 became overruled by Martin, the district court was unjust when it ignored Rule 60 and Martin. District court did not pronounce that the filing of a petition for writ of error

and relief from existing judgment was untimely. It did not say that Martin was irrelevant. It was unjust for the district court to grant finality to its judgement dated April 16, 1987.

For a district court, which was postponing the progress of the instant case for 50 months while the fourth circuit's opinion in Adams-1983 and the Highest Court's opinion in DelCostello-1983 were brewing, it was unjust to ignore the fourth circuit's opinions in Shoup & Childers and the Highest Court's directive in Martin.

In the EEOC-filed action JH-79-1826, petitioner was never a party to the action; he was never summoned to appear; he never had his day in the court. So, in light of the Martin holding, petitioner's Title VII rights, inherent in JH-79-1826, were and are not lost.

Petitioner's Title VII rights were

not at issue in Case B-84-2465 which was dismissed by the court on April 4, 1985.

On February 15, 1985, when the district court adopted in entirety the magistrate's report dated February 27, 1984, the court adopted a recommendation that petitioner's Title VII claims be dismissed based on Adams-1983.

Hence, in regard to his Title VII claims, until current date, petitioner never had his day in the court.

The district court and magistrate denied progress to the instant case from January 4, 1980 through February 27, 1984. They would have been partially justified if they had not relied on any case law that emerged during this period of time. Instead, the magistrate, in his report dated February 27, 1984, relied on a number of case laws that were filed during said period of time: Adams-1983, for one example, was filed on January 17,

1983; and DelCostello-1983, for another example, was filed on June 8, 1983. It was unjust for the district court to adopt the report; the adoption meant that it was the pleasure of the district court that the progress of this case be delayed until such time when this court can clearly foresee that this pending case can be directed towards a pre-meditated result favorable to defending parties.

District court still owes a reason for applying Adams-1983 and DelCostello-1983 but for not applying Martin.

In summary, if their pleasure be so, these district judges and magistrate would postpone the progress of a certain case for years so that they can find a suitable case law that would enable them to direct the postponed pending case towards their pre-meditated goal; after their goal is reached, if a second case law comes on their way, preventing them

from holding on to their goal, they would ignore that second case law. And that is pure injustice.

7. District court made no suggestion that the filing of a petition for writ of error was untimely or unwarranted.

The following dissimilarities existed between Adams-1983 and the instant case:

(a) In Adams-1983, charging parties were informed of the EEOC-filed case's progress until consent decree was finalized. (Adams at 1191-1192).

In JH-79-1826, consent decree was drafted, filed, and entered by court, without this petitioner's knowledge.

(b) In Adams-1983, consent decree allowed monetary awards to charging parties. (Adams at 1192 & Adams-1983 at 583).

In JH-79-1826, the complaint

requested monetary reimbursement to the only charging party, but the consent decree provided no monetary award to that only charging party.

(c) In Adams-1983, right-to-sue letters were issued after the consent decree was made and the provided awards were rejected by the charging parties. (Adams-1983 at 583).

In JH-79-1826, right-to-sue letter was issued to instant petitioner on October 25, 1979, i.e., almost 8 full months prior to the date June 18, 1980 when the consent decree was entered by the court. (In its said right-to-sue letter, EEOC stated that:

> [W]ith the issuance of this Notice of Right to Sue the Commission is terminating any further processing of this charge.

For that reason, JH-79-1826 was litigated not on behalf of this petitioner, and the consent decree made therein on June 18,

1980 did not affect this petitioner's Title VII claims).

JH-80-0012 and JH-79-1826 were concurrently pending between January 4, 1980 and June 18, 1980 before the same district judge Honorable Joseph Howard.

(d) In Adams, EEOC functioned as amicus. (Adams at 1192).

In JH-80-0012, EEOC did not function as amicus; ever from January 4, 1980 your petitioner has been litigating lonely.

(e) In Adams and Adams-1983, instant petitioner did not find hard evidence that the charged party Proctor & Gamble Mfg. Co. refused to participate in conciliation efforts prior to the making of a consent decree.

In JH-79-1826, EEOC attempted to make a conciliation agreement but failed because, even though petitioner agreed to conciliate, the respondents and Mr. Rubenstein refused to conciliate.

(f) Filing of an action by EEOC, based on a charge, was mandated to occur within 180 days from the date of the charge. (Adams at 1192).

In JH-79-1826, EEOC far exceeded the limitations mandated by the Congress; petitioner signed the EEOC-filled charge-form on August 30, 1978 but JH-79-1826 was filed on September 28, 1979.

For the foregoing reasons, Magistrate Smalkin was erroneous in recommending that the circumstances of Adams-1983 and instant case were similar on Title VII claims. And the district court erred by adopting the Title VII recommendation.

The summary holding in Adams-1983 was:

> ... The Court of Appeals, James Dickson Phillips, Circuit Judge, 678 F.2d 1190, vacated and remanded, and rehearing was sought. On rehearing, the Court of Appeals held that suits by individuals who are charging parties, who have not intervened in pending Equal Employment Opportunity Commission action in their behalf, are precluded once the EEOC action has been concluded by a consent decree.

(Adams-1983 at 582) (Emphasis added.)

(1) The facts in JH-79-1826 were: (i) that this petitioner was the only charging party, (ii) that the making and filing of a consent decree was hidden from this petitioner until one month after the decree was entered by Judge Howard, (iii) that this petitioner was never a party, (iv) that this petitioner was never summoned to appear in the case, (v) that this petitioner never had his day in the court, and (vi) that the case was litigated on behalf of the public, not on behalf of this petitioner.

> ("The EEOC represents the public interest rather than specific individuals in its litigation efforts." --Mr. James C. Lafferty, Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, Washington, D.C. 20507, August 30, 1990 [repeated August 30, 1990]).

(2) Assume, arguendo, that the October 25, 1979 right-to-sue letter did not contain the sentence quoted in

section (c) above (page 57), and that Case JH-79-1826 was indeed litigated on this petitioner's behalf.

Regardless of whether JH-79-1826 was or was not litigated on behalf of this petitioner, the above-quoted summary holding of Adams-1983 puts the fourth circuit in a head-on collision with the instant Highest Court and the United States Court of Appeals for the Eleventh Circuit:

> The District Court held that the white firefighters were precluded from challenging employment decisions taken pursuant to the decrees, even though these firefighters had not been parties to the proceedings in which the decrees were entered. We think this holding contravenes the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party. (Martin at 2183).
>
> All agree that it is a principle of general application in anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. (Martin at 2184).

In the court below, the respondents attempted to live on the claim that a "non-party" did not mean the same thing as "stranger". But Justice Brandeis has made it clear that any non-party, who was not a privy, who never had his day in the court, and who was not summoned to appear in a legal proceeding, should be considered a stranger.

Even the dissenting Justices of the Martin Court concluded that a non-party must be joined to a lawsuit as a party if his/her interests are to be affected by the outcome of the lawsuit:

> In this case the Court quite rightly concludes that the white firefighters who brought the second series of Title VII cases could not be deprived of their legal rights in the first series of cases because they had neither intervened nor been joined as parties. (Martin at 2188).
>
> In this case there is no dispute about the fact that the respondents are not parties to the consent decrees. It follows as a matter of course that they are not bound by those decrees.7 ...

> 7. ...: "... A court's approval of a consent decree between some of the parties therefore cannot dispose of the valid claims of nonconsenting [individuals] ... And, of course, a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree." (Martin at 2190).

Therefore, in October 1989, the district court erred when it failed to reverse its judgment dated April 16, 1987 in regard to Title VII claims.

This refusal or failure of the district court is symptomatic of a fact that the district court, from January 4, 1980 through April 16, 1987, continuously maintained its mind aimed towards a similar and/or identical bent.

Summary

The foregoing facts and others existing in the records overwhelmingly establish that the district and state courts considered that judiciaries exist for the benefit of the wealthy and the

authority-holding entities of the American public.

Conclusion

For the foregoing reasons, the instant petition for writ of certiorari to the fourth circuit should be granted, the courts below should be directed to reinstate the cases in entirety & to allow relief as prayed for in the complaints, and the petitioner & his 23 fellow employees should be declared granted such further relief as deemed appropriate.

Respectfully submitted by,

Kondian R. Rajaram
1746 Eastern Avenue
Baltimore, Maryland 21231
Telephone (301) 563-0990

PROOF OF SERVICE

I, Kondian R. Rajaram, do hereby certify that today, , 1990, I mailed, by first-class mail certified with return receipts, postage prepaid, 3 copies of my petition and attached appendix, each one identical to any one of the 40 copies filed with the Clerk of the Supreme Court, to EACH of the following two attorneys of record, each being counsel of record for all five respondents, at his last-known address of record as recited below:

1. Brian A. Powers, Esq., O'DONOGHUE & O'DONOGHUE, 4748 Wisconsin Avenue, N.W., Washington, D.C. 20016 Telephone (202) 362-0041

2. Bernard Wolf Rubenstein, Esq., ABATO, RUBENSTEIN & ABATO, P.A., 2360 West Joppa Road, Suite 308, Lutherville, MD 21093 Telephone (301) 321-0990

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EDITOR'S NOTE

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90-580

No.

Supreme Court, U.S.
FILED
SEP 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

Supreme Court of the United States

October Term, 1990

Kondian R. Rajaram, Petitioner,

v.

International Typographical Union
(Currently known as "Printing, Publishing
& Media Workers Sector of the
Communications Workers of America");

Baltimore Typographical Union No. 12;

Sunpapers Chapel of
Baltimore Typographical Union No. 12;

Jack Jerome Poist;

Gary Kidwell; Respondents,

and

A.S. Abell Publishing Company, Defendant

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

Appendix Accompanying the
Petition for Writ of Certiorari

Kondian R. Rajaram
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Pro Se Petitioner

APPENDIX

[Under instructions of the personnel of the Clerk's Office that an appendix attached to a petition be small, reproduction of materials in full is limited to some of those documents considered coming under Rule 14.1.(k)(i), (ii), & (iii). The material considered coming under Rule 14.1.(k)(i) is considered as coming under (iv) also. Materials considered coming under Rule 14.1.(k)(v) are heavily limited both in number of entries and portion(s) of each entry, except for document identification and relevant lines of the text; statutes and rules, which appear in printed form and exist in the library, are also not reproduced. If the petition for writ of certiorari to review a decision of the circuit court is granted, petitioner's then-retained counsel will provide additional documentary support while briefing the Court and while arguing before the Court.]

Rule 14.1.(k)(i) at pages 2a-4a.

Rule 14.1.(k)(ii) at pages 5a-144a.

Rule 14.1.(k)(iii) at pages 145a-146a.

Rule 14.1.(k)(v) at pages 147a-152a.

[[Rule 14.1.(k)(i)]]

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNPUBLISHED

No. 89-3375

KONDIAN R. RAJARAM, Plaintiff-Appellant,

versus

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
JACK POIST; GARY KIDWELL,

Defendants-Appellees,

and

SUNPAPERS CHAPEL OF BALTIMORE
TYPOGRAPHICAL UNION NO. 12;
A.S. ABELL PUBLISHING COMPANY,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walter E. Black, Jr., District Judge. (C/A No. 80-12-B)

Submitted: April 12, 1990

Decided: June 20, 1990

Before PHILLIPS and SPROUSE, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Kondian R. Rajaram, Appellant Pro Se.

Brian A. Powers, O'DONOGHUE & O'DONOGHUE, Washington, D.C.; Bernard Wolf Rubenstein, ABATO, RUBENSTEIN & ABATO, P.A., Lutherville, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Kondian R. Rajaram appeals from the district court's order denying Rajaram's Fed. R. Civ. P. 60(b) motion. Our review of the record and the district court's opinion discloses that the district court did not abuse its discretion and this appeal is without merit. Accordingly, we

affirm on the reasoning of the district court. Rajaram v. International Typographical Union, C/A No. 80-12-B (D. Md. April 15, 1987). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process. **AFFIRMED**

[[Rule 14.1.(k)(ii)]]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM (entered October (20, 1983)

vs.

INTERNATIONAL TYPOGRAPHICAL UNION; and

BALTIMORE TYPOGRAPHICAL UNION NO. 12;

and SUNPAPERS CHAPEL OF BALTIMORE

TYPOGRAPHICAL UNION NO. 12; and

JACK POIST and

GARY KIDWELL;

A.S. ABELL PUBLISHING COMPANY

CIVIL NO. B 80-0012

MAGISTRATE'S REPORT AND RECOMMENDATION

I.

Plaintiff, Kondian R. Rajaram, is a member of defendant Union International Typographical Union (ITU), Baltimore Typographical Union No. 12 (BTU-12) and Sunpapers Chapel of Baltimore Typographical Union No. 12 (Sun Chapel). As a union member, he worked as a

contract substitute employee on a casual basis for defendant A.S. Abell Publishing Co. (Abell) until July 1978, when substitute work was eliminated. Plaintiff alleges that the elimination of this substitute work was motivated by intentional discrimination on the parts of all of the defendants.

Plaintiff filed his initial complaint, pro se, on January 4, 1980, naming ITU, BTU-12, Sun Chapel, Poist, and Kidwell as defendants. (Paper #1). On September 13, 1982, plaintiff obtained counsel to represent him, and an amended complaint was filed, with leave of court, on September 24, 1982. (Paper #46). Finally, on January 20, 1983, plaintiff filed a second amended complaint that named, for the first time, Abell as a defendant. (Paper #53). On February 28, 1983. Abell moved for dismissal or, in the alternative, for

summary judgment. (Paper #58). By previous order of Judge Black, dated July 27, 1982, the case had been referred to me in accordance with Local Rule 80. The pending motions in the case were all heard on October 12, 1983.

II.

Plaintiff alleges that Abell violated plaintiff's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e et seq., by aiding and assisting the other named defendants in:

(1) maintaining a provision in the Union bylaws that required plaintiff to seek internal Union remedies before he was allowed to resort to a discrimination charge under Title VII;

(2) maintaining a provision in the Union bylaws which forced plaintiff to seek internal Union remedies at considerable expense to plaintiff and that had the effect of prohibiting plaintiff from exercising his Title VII remedies for an indefinite period of time;

(3) limiting plaintiff's employment opportunities by giving a job to a white worker, of lower priority

status than plaintiff, which was due plaintiff (contrary to the provisions of 42 U.S.C. S 2000e-2(a)(1); and

(4) discriminating against plaintiff because of the latter's opposition to Abell's hiring practices (contrary to the provisions of 42 U.S.C. S 2000e-3(a)).

The Court has determined that these claims under Title VII must be dismissed because plaintiff failed to exhaust his administrative remedies with the EEOC as required under 42 U.S.C. S 2000e-5.

Plaintiff claims that the District Court "has jurisdiction to hear a complaint even though the matter has not been presented to the EEOC, where the failure to present the matter is inadvertent" (Paper #59), and he cites Sharma v. Opportunities Industrialization Center, 342 F. Supp. 209 (E.D. Wis. 1972), in support of this contention. However, in Sharma, the court was faced with the issue of whether plaintiff's

failure to comply with the exhaustion requirements under Title VII precluded his action under 42 U.S.C. S 1981. The court held that plaintiff could proceed with his S 1981 action in lieu of his Title VII remedy if there was reasonable excuse for plaintiff's failure to exhaust his Title VII remedies. Thus, sharma is entirely beside the present point.

Plaintiff also cites Movement for Opportunity and Equality v. General Motors Corp., 622 F. 2d 1235 (7th Cir. 1980), in support of his contention that the exhaustion of administrative remedies is not required. However, the court in that case stated that there are strict requirements for the plaintiff to (1) file a charge with the EEOC and 2) (sic) receive the right to sue letter from the EEOC and act on it within the requisite time. These requirements can only be relaxed when the plaintiff's failure to

sue is due to misleading acts by the EEOC, the employer, or the union. Here, there is no evidence that the EEOC, Abell, or the unions misled plaintiff into believing that he had a complaint only against the unions, rather than against the unions and Abell together. In that plaintiff has never filed an EEOC claim against Abell, he is absolutely barred from proceeding under Title VII against that company. Bickley v. Univ. of Md., 527 F. Supp. 174, 179 (D.Md. 1981).

Plaintiff has had actual knowledge of his Title VII rights since August 30, 1978, yet he has never filed a discrimination claim against Abell with the EEOC. The courts do not treat the charges made to the EEOC as strictly as they would common law pleadings, in that the EEOC can expand the charges made against a specific defendant based on its

investigation. EEOC v. General Electric Co., 532 F.2d 359 (4th Cir. 1976). However, the courts do require that a specific defendant be named in the EEOC charge. See Freeman v. Schultz, 468 F.2d 120 (D.C. Cir. 1972) (An oral complaint against an employer with the EEOC that only triggered an informal investigation is insufficient exhaustion of administrative remedies under Title VII.). Because plaintiff has never filed administrative charges against Abell with the EEOC, and thus never afforded Abell the opportunity to assert its defendants (sic) in the administrative forum, plaintiff's Title VII claims should be dismissed.

III.

Plaintiff also claims against Abell under 42 U.S.C. S 2000e-10, alleging that Abell failed to post a proper notice of the employees' rights under Title VII. S

2000e-10 provides:

(1) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(2) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

The issue here is whether a private cause of action for damages can be implied under this section. To determine whether a private case of action is implicit in a statute, several factors must be analyzed. First, plaintiff must be a member of the class for whose benefit the statute was enacted. Second, there must be a legislative intent to create such a remedy. Third, it must be consistent with the underlying purpose of the

statute to imply such a remedy for the plaintiff. Finally, it must be ascertained whether the cause of action is traditionally relegated to state law, or whether it would be appropriate to infer a cause of action based solely on federal law. See Cort v. Ash, 422 U.S. 66, 78 (1975). Here, although plaintiff is a member of the class for whom the statute was enacted, the legislative history indicates that the statute's purpose is to allow the EEOC to prepare or approve notices that set forth excerpts of the title, and to require employers and unions to post these notices in conspicuous places. An employer's or union's willful failure to comply results in fines. H.R. REP. NO. 914 88th Cong., 2nd Sess., reprinted in 1964 U.S. CODE CONG. & AD. NEWS, 2355, 2407. Thus, the purpose of the statute is only to provide the EEOC with

regulatory power (via fines) over the employers and the unions, rather than to create a private remedy for the employees. The Court simply cannot conceive, especially given the elaborate civil remedial provisions of the same subchapter of Title 42 of which S 2000e-10 is a part, that Congress ever intended a private right of action to arise from simple failure to post notices. None of the other factors in the Cort v. Ash analysis is persuasive otherwise. For this reason, plaintiff's claim under S 2000e-10 must be dismissed.

IV.

Plaintiff also alleges that Abell violated plaintiff's civil rights under 42 U.S.C. SS 1985, 1986, and 1981, respectively, by: (1) conspiring with the other named defendants to interfere with plaintiff's civil rights; (2) failing to prevent the other named defendants from

violating plaintiff's civil righs (sic) under S 1985, although allegedly Abell knew of these wrongs and had the power to stop them; and (3) denying plaintiff his right to equal benefits under the law.

However, plaintiff's claims under SS 1981, 1985, and 1986 must be dismissed because they are barred by the statute of limitations. The statute of limitations for an action under S 1981 is three (3) years. McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., No. 82-1179 (4th Cir. Jan. 17, 1983). The limitations period for actions under S 1986, as stated in the statute itself, is one (1) year. The statute of limitations for actions under S 1985 is three (3) years, with the cause of action accruing when the plaintiff knows or has reason to know of his injury: "It is the awareness of the facts giving rise to the cause of action, not the awareness that

the illegality of the action is conclusively provable that begins the running of the state of limitations." Lewis v. Clark, 534 F. Supp. 714, 716 (D.Md. 1982). Plaintiff was aware of a possible cause of action as early as August 30, 1978, when he filed a discrimination claim with the EEOC against defendants ITU, BTU-12, and Sun Chapel (Paper #1); however, plaintiff failed to assert his claim against Abell until almost five years later (January 20, 1983).

Plaintiff asserts, however, that he is entitled to a tolling of the statute of limitations under either the doctrine of fraudulent concealment or the doctrine of continuing violations. The doctrine of fraudulent concealment is set forth in Davis v. Edgemere Finance Co., 523 F. Supp. 1121 (D.Md. 1981). A statute of limitations is tolled when the defendant,

by fraudulent means, keeps the potential plaintiff in ignorance of the fact that plaintiff has a cause of action.

Plaintiff must prove:

> "(1) fraudulent concealment by the party raising the statute together with (2) the other party's failure to discover the facts which are the basis of his cause of action despite (3) the exercise of due diligence on his part." Since this means of avoiding the statute was created by courts of equity, we adopted their requirement that the facts necessary to show these elements should be distinctly pleaded .... In Stearns v. Page, 48 U.S. (7 How.) 818, 829, 12 L.Ed. 928 (1849), the Court explained the reasons for these essential elements as follows:
>
> "A complainant, [to avoid the statute of limitations,] must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment,--must specify how, when, and in what manner, it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved .... And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made."

Davis, 523 F. Supp. at 1125 (footnote omitted).

Plaintiff has alleged that Abell and the other named defendants "participated in involved, convoluted transactions" which resulted in the denial of plaintiff's civil rights; that the "complexity of occurrence were such that" plaintiff should not have been expected to "comprehend the nature of involvement of the various parties" and that plaintiff was unaware of potential remedies "because facts were concealed and transactions hidden"; plaintiff asserts that he has "actively pursued" all remedies to the best of his ability. These contentions are unsupported by any specific factual allegations, as required under the Davis test. The plaintiff's counsel was unable to articulate specific facts pertaining to the alleged fraudulent concealment at the October 12

hearing, other than to refer to Mr. Rajaram's speculations as to the existence of a conspiracy between Abell and the unions. This speculation is clearly insufficient under Davis.

Plaintiff asserts, also, that he was unable to discover Abell's involvement in these discriminatory transactions until November 1982, when fully advised by new counsel, and therefore was unable previously to obtain knowledge of his injury and the cause of his injury. Thus, he claims that the statute of limitations was tolled until November, 1982 under the standards set forth in United States v. Kubrick, 444 U.S. 111 (1979). In Kubrick, the plaintiff sued under the Federal Tort Claims Act for the VA's negligent administration of an antibiotic that caused a permanent hearing loss. Although plaintiff sought care for the hearing loss shortly after

the original treatment and was told that the medication could have caused his hearing impairment, it was not until three years later that he was advised by a physician that the medicine was negligently administered. It was then that plaintiff instituted suit. Although the Court recognized that a cause of action did not accrue until the plaintiff was aware of his injury and its cause, plaintiff did not have to be aware that the doctor's conduct was legally blameworthy before the cause of action accrued. The Court noted that it was "unconviced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause should receive identical treatment," Kubrick, 444 U.S. at 122, and it held that plaintiff's cause of action was barred by the two (2) year statute of

limitations.

In this case, plaintiff's reliance in Kubrick is misplaced. The rule in Kubrick has been held inapplicable outside of medical malpractice situations. See Wilkinson v. United States, 677 F.2d 998, 1002 (4th Cir.), cert. denied, 103 S.Ct. 209 (1982). Also, plaintiff has equated the "cause of injury" discussed in Kubrick with legal liability, rather than, as in Kubrick, connecting the cause of injury with a mechanical "but for" event. Mr. Rajaram was aware of his injury (abridgement of his civil rights) and the cause of his injury (the defendants' alleged failure to comply with seniority priorities, etc.) as early as August 30, 1978. The claim that he was ignorant of his legal right to sue Abell along with the other named defendants is not sufficient to toll the running of the statute of

limitations. As the Court noted in Kubrick, once the plaintiff is aware of his injury and the cause of his injury, the onus is upon him to seek professional advice; to hold otherwise would defeat one purpose of the statute of limitations of preventing stale claims from being raised. See Kubrick, 444 U.S. at 118.

Plaintiff further contends that he is entitled to a tolling of the statute of limitations under the doctrine of continuing violations. However, a "continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation." Ocean Acres v. Dare Co. Board of Health, Nos. 82-1458, 82-1489 (4th Cir. May 12, 1983). Assuming, arguendo, that there was discrimination by Abell that constituted a series of acts during the employer-employee relationship, this would not allow plaintiff to sue Abell in

1983, because his employment with the company ended in 1978; plaintiff would have had to have sued within three (3) years of his discharge in order to invoke the continuing violations remedy. See Williams v. Norfolk & W. Ry. Co., 530 F.2d 539 (4th Cir. 1975). Because plaintiff has failed to show that he met the requirements under either the doctrine of fraudulent concealment or the doctrine of continuing violations, he is time-barred from raising his claims under 42 U.S.C. SS 1981, 1985, and 1986.

V.

Plaintiff has alleged that Abell breached a collective bargaining agreement, in violation of S 301 of the Taft Hartley Act, 29 U.S.C. S 185. This claim, however, must be dismissed because it is barred by the six (6) month statute of limitations applicable to S 301 breach of contract actions. DelCostello v.

International Brotherhood of Teamsters, 51 U.S.L.W. 4693 (1983).

VI.

Plaintiff further alleges that Abell engaged in unfair labor practices in violation of S 8(a) of the Taft-Hartley Act, 29 U.S.C. S 158(a), by its participation with the other named defendants in discriminatory hiring and tenure practices. This claim must be dismissed because this Court does not have subject matter jurisdiction. Section 8(a) claims are within the exclusive jurisdiction of the NLRB. While the District Court can have jurisdiction over a S 301 claim concurrent with the NLRB's jurisdiction over a S 8(a) claim, see Smith v. Evening News Association, 371 U.S. 195 (1962); Newport News Shipbuilding & Drydock Co. v. Peninsula Shipbuilders Assn., 646 F.2d 117 (4th Cir. 1981), a S 8(a) claim can

only be brought before the NLRB.

VII.

Finally, plaintiff has raised a state law contract claim against Abell, alleging that: "The plaintiff was not compensated for the years of service rendered." State law claims are appropriate for the Court's determination if they form a separate but parallel ground for relief sought in a substantial claim based on federal law. However, where, as here, the federal claims are insubstantial, the federal court should not assume jurisdiction over the state claim: "Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). Therefore, this state claim should also be dismissed.

VIII.

For the reasons stated above, I respectfully recommend that, upon the expiry of time allowed in Local Rule 82 and FED. R. CIV. P. 72 for taking exception hereto, an order be entered granting defendant Abell's motion to dismiss.

/s/
Frederic N. Smalkin
United States Magistrate

Dated: October 18th, 1983

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM (entered November) (10, 1983)

vs.

INTERNATIONAL TYPOGRAPHICAL UNION; and BALTIMORE TYPOGRAPHICAL UNION NO. 12; and SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12; and JACK POIST and GARY KIDWELL; A.S. ABELL PUBLISHING COMPANY

CIVIL NO,. B-80-0012

O R D E R

Upon consideration of the Magistrate's Report and Recommendation dated October 18, 1983, and upon the expiry of time allowed in Local Rule 82 and FED. R. CIV. P. 72 for taking exception hereto, IT IS, this 6th day of November, 1983, by the United States District Court for the District of Maryland ORDERED:

1. That the Magistrate's Report and

Recommendation BE, and the same hereby IS ADOPTED;

2. That Defendant Abell's motion to dismiss BE, and the same hereby IS, GRANTED; and

3. That the Clerk of Court mail copies of this Order to counsel for the parties.

/s/
Walter E. Black, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM (entered February (28, 1984)

vs

INTERNATIONAL TYPOGRAPHICAL UNION, ET AL.

CIVIL NO. B 80-0012

MAGISTRATE'S REPORT AND RECOMMENDATION

I.

Plaintiff, Kondian R. Rajaram, a native of India and now a naturalized American citizen, is a member of the defendant Unions, viz., International Typographical Union (ITU), Baltimore Typographical Union No. 12 (BTU-12), and Sunpapers Chapel of Baltimore Typographical Union No 12 (Sun Chapel). As a Union member, he worked as a contract substitute employee for the A. S. Abell Publishing Company from August, 1974 until July, 1978, when substitute work was eliminated. In January, 1980, plaintiff filed a complaint in this

Court, alleging discriminatory actions on the part of the Unions and two officers of Sun Chapel, Jack Poist and Gary Kidwell.

The case is now before the Court on plaintiff's amended motion for summary judgment (Paper No. 122); the cross-motions for summary judgment filed by defendants BTU-12, Sun Chapel, Poist and Kidwell (Paper No. 124) and ITU (Paper No. 127); and the parties' supplemental memoranda. By previous order of Judge Black, dated July 27, 1982, the case was referred to me in accordance with Local Rule 80. The above-mentioned motions were heard on February 7, 1984. The plaintiff's claims, set forth in the amended complaint in 16 counts, arise under a constellation of jurisdictional bases., For eace of discussion, this Court has organized its analysis according to the jurisdictional bases for

plaintiff's various claims.

II.

Plaintiff alleges that all of the defendants violated his rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e et seq. (1976, as amended) by:

1. Maintaining illegal provisions in the Union by-laws that

   a. abridged plaintiff's Title VII rights (Plaintiff's affidavit {1} paragraphs 11, 12, 13, 15, 17); and

   b. forced plaintiff to incur considerable personal expense in pursuing his internal Union remedies (Plaintiff's affidavit, paragraphs 29, 30);

2. Illegally by-passing plaintiff for a substitute position in November, 1976, in favor of a white worker with lower priority (Plaintiff's affidavit, paragraphs 8, 9);

3. Instituting an illegal "share the work" agreement in January and February, 1977, which caused plaintiff to lose employment opportunities (Plaintiff's affidavit paragraph 10);

4. Refusing to accept prepayment of plaintiff's Union dues in 1976

(Plaintiff's affidavit, paragraph 8); and

5. Eliminating, in December, 1976, the position for which plaintiff had first priority, in retaliation against plaintiff's complaints (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20).

{1} Plaintiff's affidavit is attached to Paper No. 122.

With respect to plaintiff's first claim, concerning illegal provisions in the Union by-laws, this Court is of the opinion that the Title VII action is barred because plaintiff is bound by the consent agreement entered into among the EEOC, ITU, and Sun Chapel. (Paper No. 127, Ex. 4). Plaintiff originally raised this charge with the EEOC in August, 1978. (Paper No. 127, Exs. 7, 8). The EEOC, determining that there was reasonable cause to believe that the by-laws violated plaintiff's Title VII

rights, invited the parties to conciliate. When that effort failed, the EEOC instituted suit in this Court against ITU and Sun Chapel and invited plaintiff to intervene, pursuant to 42 U.S.C. S 2000e-5(f)(1). (Paper No. 127, Ex. 2). Plaintiff refused to do so. Subsequently, ITU and Sun Chapel entered into a consent agreement with the EEOC in which the Unions agreed to amend their by-laws, publish these amendments, and forbear from retaliatory discrimination against any complaining worker. (Paper No. 127, Ex. 4). EEOC v. Sunpaper Chapel of BTU-12, et al., No. JH-79-1286 (sic) (D.Md. June 18, 1980). No provision was made in this consent agreement to compensate plaintiff for the considerable personal expense incurred in pursuing his Union remedies under the illegal by-laws.

Because plaintiff was not a party to the consent agreement, he now argues that

he is not bound by it and can recover compensation from the Unions. Under the statutory scheme of 42 U.S.C. S 2000e-5(f)(1), a charging party has an unqualified right to intervene in the EEOC's lawsuit. If he wishes to participate in or reject any settlement negotiated by the EEOC, he may protect himself by intervening. However, the Fourth Circuit has decided that, under the statutory language of S 2000e-5(f)(1), if a charging party chooses not to intervene, then he will be held to have placed the conduct of the litigation entirely in the hands of the EEOC and to have expressed a conclusive willingness to be bound by the outcome. Adams v. Proctor & Gamble Mfg. Co., 697 F.2d 582, 583 (4th Cir. 1983). In the instant case, plaintiff undoubtedly wishes, with hindsight, that he had intervened in the EEOC action and pursued recovery of his

expenses in that manner. But, as the holding in Adams v. Proctor & Gamble Mfg. Co. makes clear, plaintiff cannot now litigate the matter before this Court, because he is bound by the consent decree, and because the EEOC simply has no statutory authority to issue a right-to-sue letter to a non-intervenor, once the EEOC has, itself, commenced litigation.

However, contrary to defendant ITU's assertions, plaintiff's second, third, and fourth claims are not barred by the prior consent agreement. Although plaintiff filed these three charges with the EEOC in August, 1978, they were dismissed by the Commission on the merits in November, 1978 (see paper No. 127, Ex. 8), and plaintiff was issued a right-to-sue letter nearly one year later, in October, 1979. (Paper No. 1, Ex. 3). As long as the suit is brought timely, as

was the case here, a charging party may institute a court action despite the fact that the EEOC previously determined that the charges were without merit and therefore made no attempt to secure voluntary compliance. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798-99 (1973). Adams v. Proctor & Gamble Mfg. Co. does not bar the suit, because the pendency of EEOC litigation does not deprive that agency of statutory authority to issue right-to-sue letters with regard to dismissed claims.

On the merits of the second and third claims, concerning the job by-pass and "share the work" agreement, plaintiff alleges that defendants' actions resulted in disparate treatment of plaintiff. He asserts that the defendants were motivated by a discriminatory attitude toward his national origin and the desire to retaliate against him for his

complaints against the Unions. To establish a prima facie case of disparate treatment under Title VII, plaintiff must show that he was treated less favorably than others in the same situation because of his race, color, religion, sex, or, as is alleged in this case, national origin. International Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977); see also McDonnell Douglas Corp. v. Green, 411 U.S. at 802. A prima facie case of disparate treatment could also be made by showing that the defendants retaliated against plaintiff for the latter's complaints to the Union. See Avon v. Sampson, 547 F.2d 446, 449 (9th Cir. 1976; 42 U.S.C. S 2000e-3(a). Proof of discriminatory motive on the defendant's part is critical, although in some situations it can be inferred from the mere fact of differences in treatment. International Brotherhood of

Teamsters v. United States, 431 U.S. at 335 n.15. Once the plaintiff succeeds in establishing a prima facie case, the burden shifts to the defendant "to articulate some legitimate, non-discriminatory reason for the employee's rejection." McDonnell Douglas Corp. v. Green, 411 U.S. at 802. Defendant must show a non-discriminatory reason, but does not have to show that it was actually motivated by this proffered reason. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). The burden then reshifts to the plaintiff to show that defendant's proffered reason is pretextual only, and that defendant was actually motivated by a discriminatory animus. Id., 450 U.S. at 256.

In the instant case, this Court is of the opinion that plaintiff has presented triable issues on his second

and third claims concerning the job by-pass and "share the work" agreement. With regard to the second claim, plaintiff has shown--and defendants do not dispute--that he was first in priority for a substitute position that was awarded to a white (American) worker with less seniority. Defendants have asserted a non-discriminatory justification--they assumed plaintiff was uninterested in day work, based on his prior preferences, and they therefore gave the job to the highest priority worker who requested day work (see Keys [sic] affidavit attached to Paper No. 124, paragraph 7)--that plaintiff has challenged as a pretextual. This raises a genuine dispute as to material fact that, under FED.R.CIV.P. 56, requires denial of the parties' motions for summary judgment on this issue. See Cole v. Cole, 633 F.2d 1083, 1092 (4th Cir.

1980).

Similarly, with regard to his third Title VII claim, plaintiff has shown that the "share the work" agreement--voted on only by the days substitutes, not all of the substitutes--had an adverse impact on the workers with the most seniority, including plaintiff, who was senior proofreader. Of particular importance is plaintiff's allegation--not answered by defendants--that plaintiff was not notified of the voting date and thus not afforded an opportunity to participate in the formation of this agreement. Defendants have asserted a non-discriminatory justification for the agreement--a desire to provide an opportunity for all substitutes to work as often as possible--that plaintiff has labeled as pretextual. This again raises a genuine dispute as to material fact under FED.R.CIV.P. 56, which must heard

at trial.

However, this Court is of the opinion that plaintiff's fourth claim, concerning the prepayment of his Union dues, fails to establish a prima facie case of disparate treatment. By plaintiff's own admission, his request to prepay his Union dues was in fact accepted--albeit after "strenuous insistence." The matter is simply damnum sine injuria. (Plaintiff's affidavit, paragraph 8).

Plaintiff's final Title VII claim, that his civil rights were violated by the retaliatory elimination of substitute positions in December, 1976, is barred because plaintiff failed to exhaust his administrative remedies regarding that claim with the EEOC, as required under 42 U.S.C. S 2000e-5. That statute contains strict requirements that plaintiff file a charge with the EEOC, receive a right-to-

sue letter, and act upon that letter timely. These requirements can only be relaxed when the plaintiff's failure to follow this procedure is due to misleading acts by the EEOC, an employer, or a union--none of which is alleged in plaintiff's affidavit. Plaintiff's failure to file a claim with the EEOC thus bars his Title VII suit on this issue. Bickley v. University of Maryland, 527 F. Supp. 174, 177 (D.Md. 1981).

Therefore, for the reasons stated above, the parties' motions for summary judgment on the Title VII claims should be denied in part and granted in part, as indicated in the aforegoing discussion. Specifically, summary judgment should be granted for defendants as to Counts (sic) I, and part of Count VI {2} of the amended complaint, and otherwise denied for all parties on Counts V, VI (in part), and

XVI.

III.

Plaintiff also alleges a Title VII claim against BTU-12 and Sun Chapel, pursuant to 42 U.S.C. S 2000e-10, based on the

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{2} An enumeration of the Counts in plaintiff's amended complaint and recommended dispositions of the pending motions with reference thereto are contained in Appendix I.

Unions' alleged failure to post notices regarding grievance procedures available to Union members. (Plaintiff's affidavit, paragraph 17). However, as was noted in the Magistrate's Report and Recommendation of October 18, 1983 (Paper No. 107), which was adopted by the Court on November 10, 1983 (Paper No. 113), no private cause of action for damages can be implied under this section. Therefore, plaintiff's motion for summary

judgment under S 2000e-10 should be denied, and defendants' cross-motion should be granted, as to Count VII of plaintiff's amended complaint.

IV.

Plaintiff further alleges that all of the defendants violated his right to equal treatment under the law, pursuant to 42 U.S.C. S 1981, by:

1. Refusing to accept advance payment of plaintiff's Union dues in 1976;

2. Illegally by-passing plaintiff for a substitute position in November, 1976 (Plaintiff's affidavit, paragraphs 8, 9);

3. Retaliating against plaintiff in December, 1976 for his complaints by eliminating the job for which plaintiff had first priority (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20); and

4. Forcing plaintiff to participate in an illegal "share the work" agreement during January and February, 1977 (Plaintiff's affidavit, paragraph 10).

Plaintiff's first three claims, involving the dues payment dispute, job

by-pass, and subsequent elimination of substitute positions, occurred in 1976. These three claims are therefore barred by the statute of limitations, which is three years for claims brought under Section 1981. McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., 698 F.2d 676, 679 (4th Cir. 1983). These are discrete claims, arising from discrete incidents, and are not continuous in force or effect. Thus, they are time-barred.

Turning to the merits of plaintiff's fourth claim under Section 1981, which is not barred by the statute of limitations, plaintiff must first show that there was discrimination against him on account of race. This rule is grounded in the constitutional and legislative history of Section 1981, which was enacted to enforce the scope of the Thirteenth Amendment. Congress was clearly given

the power "to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440 (1968). Thus, discrimination based on sex, religion, or national origin is not actionable under Section 1981. See Patel v. Holley House Hotels, 483 F. Supp. 374, 383 (S.D.Ala. 1979); Woods v. New York, 469 F. Supp. 1127 (S.D.N.Y.), aff'd., 614 F.2d 1293 (2d Cir. 1979); National Association of Government Employees v. Rumfeld, 413 F. Supp. 1224 (D.D.C. 1976), aff'd., 556 F.2d 76 (D.C. Cir. 1977). Second, plaintiff must show a "purposeful" intent to discriminate on the defendant's part. General Building Contractors Assn. v. Pennsylvania, 458 U.S. 375, 389 (1982). Third, plaintiff must show that the discriminatory action occurred in

connection with an activity enumerated in Section 1981--in this case, the enforcement of an employment contract. See Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975). In the instant case, plaintiff's claim under Section 1981 is not actionable; by plaintiff's own concession, made by his counsel at the hearing held on February 7, 1984, plaintiff's claims in this case are based on discrimination on account of national origin, and, perhaps, skin tone, but not race.

Therefore, plaintiff's motion for summary judgment on all of his Section 1981 claims should be denied, and defendants' cross-motions granted, as to Count IV of plaintiff's amended complaint.

V.

Plaintiff asserts that all of the named defendants violated his civil

rights under 42 U.S.C. S 1985(3) by concurring in an agreement to end his employment in December, 1976, in retaliation for his complaints. (Plaintiff's affidavit, paragraph 14). The statute of limitations for actions under Section 1985 is three years, with the cause of action occruing when the plaintiff knows or has reason to know of his injury. Lewis v. Clark, 534 F. Supp. 714, 716 (D.Md. 1982). Arguably, plaintiff was aware of a cause of action in December 1976, when the substitute positions were abolished. If so, his Section 1985(3) actions is barred by the statute of limitations.

However, even if plaintiff were unaware of a possible cause of action until August, 1978, when he filed charges with the EEOC, plaintiff must still prove that there was: (1) a conspiracy, (2) to deprive him of equal protection of the

laws, (3) with an overt act by one of the conspirators in furtherance of the conspiracy, (4) resulting in injury to plaintiff or his property or the deprivation of one of his rights or privileges. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971). In addition, there must be some racial or other class-based discriminatory animus behind the conspirators' actions. Id., 403 U.S. at 102 n.10; Hughes v. Ranger Fuel Corp., Division of Pittston Co., 467 F.2d 6, 10 (4th Cir. 1972). In the instant case, plaintiff has made no allegations to prove the existence of a conspiracy, beyond his conclusory assertions that the defendants "consulted" and "concurred in an agreement" to deprive him of his civil rights. Pleading conspiracy under Section 1985(3) requires at least minimum factual support of the existence of a conspiracy. In the absence of such

specific allegations, and in the presence only of conjecture (even when asserted under oath), this claim cannot stand. See Yarbrough v. Illinois Dept. of Mental Health, 538 F. Supp. 414, 416 (D.Ill., 1982).

Plaintiff also contends that his rights under 42 U.S.C. S 1986 were violated by the fact that "[n]one of the defending parties prevented, helped to prevent nor tried to prevent violations mentioned in [plaintiff's] Complaint [pursuant to S 1985(3)], about which they had been notified." (Plaintiff's affidavit, paragraph 16). However, the statute of limitations for actions under Section 1986, as stated in the statute itself, is one year; therefore, plaintiff's claims under Section 1986 cannot now be raised, since he failed to file suit until January 4, 1980. Thus plaintiff's motion for summary judgment

on his Section 1985(3) and 1986 claims should be denied, and defendants' cross-motions granted, as to Counts II and III, respectively, of plaintiff's amended complaint.

VI.

Plaintiff claims that the defendant Unions breached the collective bargaining agreement and duty of fair representation, in violation of Section 301 of the Taft-Hartley Act, 29 U.S.C. S 185(a), by:

1. By-passing plaintiff for a substitute position in November, 1976, for which he was first in priority (Plaintiff's affidavit, paragraphs 8, 9);

2. Eliminating all substitute jobs in December, 1976 (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20);

3. Participating in the illegal "share the work" agreement in January and February, 1977 (Plaintiff's affidavit, paragraph 10);

4. Negotiating in bad faith with the employer in 1978, thus allowing the permanent elimination of all substitute positions (Plaintiff's

affidavit, paragraphs 14, 21, 22, 25); and

5. Forcing plaintiff to accept the buy-out payment, following the elimination of the substitute positions. (Plaintiff's affidavit, paragraphs 22, 23).

All of these claims, however, are barred by the six-month statute of limitations applicable to Section 301 causes of action. DelCostello v. International Brotherhood of Teamsters, ___ U.S. ___, 103 S.Ct. 2281 (1983). Plaintiff urges this Court not to apply the DelCostello rule retroactively in this case, because of the equities allegedly involved. However, the Fourth Circuit has clearly stated that the six-month limitations rule established in DelCostello for violations of contract/breach of duty of fair representation cases should be applied retroactively. Murray v. Branch Motor Express Co., No. 82-1202 (4th Cir. Dec.

20, 1983). The rule in Murray is, in this Court's judgment, unaffected by the equities of the particular case. Therefore, plaintiff's motion for summary judgment under Section 301 should be denied, and defendants' cross-motions should be granted, as to Count VIII of plaintiff's amended complaint.

VII.

Plaintiff further alleges that the defendants violated his rights under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. S 401 et seq., by punishing him for objecting to Union practices. In particular, plaintiff asserts that defendants violated his rights by:

1. Refusing to accept advance payment of his Union dues in 1976, in violation of Section 411(a)(1) (Plaintiff's affidavit, paragraph 8);

2. By-passing plaintiff for a substitute position for which he had first priority, in violation of Section 411(a)(1) and (2) (Plaintiff's

affidavit, paragraphs 8, 9);

3. Failing to notify the Union members concerning the provisions of the LMRDA, in violation of Section 415;

4. Maintaining an illegal clause in the Union by-laws, thereby forcing plaintiff to pursue internal Union remedies that exceeded the four-month statutory limit, in violation of Section 411(a)(4) (Plaintiff's affidavit, paragraphs 11, 12, 13, 14, 17);

5. Participating in the "share the work" agreement for two months in 1977, in violation of plaintiff's voting rights contained in Section 411(a)(1) (Plaintiff's affidavit, paragraph 10);

6. Eliminating all substitute positions in July, 1978, and subsequently failing to seek work for plaintiff, in violation of Section 411(a)(5) (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20);

7. Disciplining plaintiff by all of the above actions without providing him wih (sic) formal charges, a reasonable time in which to prepare a defense, or a full and fair hearing, in violation of Sections 411(a)(5) and 529.

This Court is of the opinion that the first two claims, involving the dues dispute and job by-pass, are barred by

the statute of limitations. The LMRDA does not contain an express statute of limitations, so the courts must look to the most analogous state statute of limitations. Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 704 (1966); See Berard v. General Motors Corp., 493 F. Supp. 1035, 1043 (D.Mass.), aff'd., 657 F.2d 261 (1st Cir. 1980), cert. denied, 451 U.S. 987 (1981). Under Maryland law, a civil action must be filed within three years of its date of accrual, unless otherwise specified by statute. MD. CTS. & JUD. PROC. CODE ANN. S 5-101 (1980 Repl. Vol.). Because the Maryland statute does not specifically provide for any cause of action analogous to the LMRDA, Section 5-101 controls. Both of plaintiff's claims arose in 1976, but he did not file this action until January 1980; therefore, these claims are time-barred.

In addition, plaintiff's third claim, concerning the failure of the Union officials to notify the members of LMRDA provisions, is simply not meritorious. A prerequisite to recovery under Section 415 is that a member ask the officers to inform the membership of the LMRDA provisions; the duty is not self-actualizing. See Broomer v. Schultz, 239 F. Supp. 699, 705 (E.D.Pa. 1965), aff'd., 356 F.2d 984 (3d Cir. 1966). In addition, if that request is denied, the complaining member must first exhaust his internal Union remedies. Wiglesworth v. Teamsters Local Union No. 592, 552 F.2d 1027, 1031 (4th Cir. 1976), cert. denied, 431 U.S. 955 (1971). In the instant case, plaintiff has presented no evidence, by affidavit or otherwise, to indicate that he requested disclosure of the LMRDA provisions by the Unions or that he raised this issue with the Unions

through his various grievances. Therefore, his Section 415 claim is not actionable.

However, plaintiff's fourth claim, that the Union by-law provisions regarding grievance procedures violated his rights under Section 411(a)(4), is actionable. The statute clearly states that unions may not require exhaustion of remedies if exhaustion requires more than four months to complete. Under the Union grievance procedures with which plaintiff was forced to comply (on penalty of losing his Union membership), final internal appeal had to be made to ITU at its annual convention. Only if a Union member filed his claim within the four months immediately prior to the annual convention could the Union by-laws comply with Section 411(a)(4). A simple look at the calendar demonstrates that such fortuitous filing would rarely occur. In

fact, in plaintiff's case, he was forced to exshaust internal Union remedies over a fifteen month period (from June, 1977 through August, 1978). See Plaintiff's affidavit, paragraph 10 and Paper No. 129, Exs. 7(a)-7(m). Defendants argue that no private right of action is implied in Section 411(a)(4). However, the language of Section 411(a)(4), read in combination with Section 412, clearly provides for the right to bring a civil action in a federal district court. See Eisman v. Baltimore Regional Joint Board of Amalgamated Clothing Workers of America, 352 F.Supp. 429, 434 (D.Md. 1972), aff'd., 496 F.2d 1313 (4th Cir. 1974); Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886, 925 (4th Cir. 1963).

Also, plaintiff's fifth claim, concerning the abridgement of his voting rights, is actionable under Section

411(a)(1). Every member of a labor organization has equal rights and privileges to participate in the deliberations and voting on union business, subject to reasonable rules and regulations in the union's by-laws and constitution. In the instant case, plaintiff alleges that he was not given an opportunity to vote on the "share the work" agreement, a claim that defendants do not dispute; at the hearing held on February 7, 1984, counsel for BTU-12, et al. conceded plaintiff's contention that only day substitutes voted on this agreement. The reason for the plaintiff's non-voting is still in dispute. Although the phrase "equal right to vote" in Section 411(a)(1) is not self-defining, if a particular Union member is prohibited from casting his ballot entirely, it is a patent denial of his equal right to vote. See Black v.

Transport Workers Union of America, AFL-CIO, 454 F. Supp. 813, 821 (S.D.N.Y.), aff'd., 594 F.2d 851 (1st Cir. 1978). Here, there is a genuine issue of material fact with regard to why plaintiff did not vote on this agreement.

In plaintiff's sixth and seventh claims, he alleges that the Unions employed improper disciplinary procedures against him, in violation of Sections 411(a)(5) and 529. "Discipline," as used in these sections, refers to retaliatory actions that affect a union member's rights or status within the union. Finnegan v. Leu, 456 U.S. 431, 437 (1982). Plaintiff asserts that the elimination of the substitute positions in December, 1976, was in retaliation against his complaints filed with the Union. However, plaintiff has failed to allege any facts that would tend to indicate retaliation on the Unions' part.

The first collective bargaining agreement ended in December, 1976. Although the employer, A. S. Abell, agreed to continue the terms of that collective bargaining agreement until a new contract was ratified, it refused to recognize the expired collective bargaining agreement provisions concerning substitute work positions; counsel for BTU-12, et al., indicated at the hearing that this refusal affected eight substitute positions. The Union challenged the employer's decision, and, under an arbitration award, it won a lump sum settlement of approximately $1,500 for each substitute worker involved. There is no indication that plaintiff was not informed of these developments, and he concedes that he accepted the lump-sum award. The adequacy vel non of the award is immaterial here. In light of the fact that there is no evidence from plaintiff

to show that the loss of substitute work was based on a retaliatory motive, his sixth and seventh claims are not actionable. Therefore, as indicated above, summary judgment should be granted for defendants as to Counts X (in part), XII, XIII and XIV of plaintiff's amended complaint, and otherwise denied for all parties as to Counts X (in part) and XI.

VIII.

In plaintiff's final claim, he alleges that the defendants breached their fiduciary duty by failing to obtain permanent or continuing substitute employment for plaintiff after the termination of the December, 1976 collective bargaining agreement. In addition, plaintiff seeks compensation for his years of service to the Union, under the theories that (1) his work as a substitute provided a service to the Union by protecting permanent job-

holders' positions, and (2) his grievance, which led to the elimination of illegal by-law provisions, protected the other Union members. These claims are predicated on a quasi-contract theory, based on the equitable doctrines of unjust enrichment and quantum meruit, and are asserted under the rubric of pendent jurisdiction. United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

In order to establish a claim based on quasi-contract, it must be shown that: (1) a benefit was conferred on the defendants by plaintiff; (2) defendants appreciated or knew of the benefit; and (3) the acceptance or retention of the benefit by defendants, without payment for its value, would be inequitable. Everhart v. Miles, 47 Md. App. 131, 422 A.2d 28, 31 (1980). In the instant case, plaintiff did not confer any benefit upon defendants that was not contemplated in

the written contract. He was hired as a proofreader substitute and compensated for the hours that he worked. Also, despite plaintiff's contention that he was promised rights not contained in his contract--specifically, permanent employment--there is simply no sufficient showing of facts to generate a triable issue on any quantum meruit theory. Plaintiff paid his union dues, which is the only "benefit" he conferred on the Unions. In turn, they did what they agreed to do by express contract. There simply has been no "unjust enrichment" of the Unions attributable to anything Mr. Rajaram did for them. The plaintiff's theory is novel, but too ethereal to support a cause of action.

For these reasons, plaintiff's motion for summary judgment on this claim should be denied and defendants' motions granted, as to Counts IX and XV of

plaintiff's amended complaint.

IX.

For the reasons stated herein, I respectfully recommend that, upon the expiry of time allowed in Local Rule 82 and FED. R. CIV. P. 72 for taking exception hereto, an order be entered denying in part and granting in part the parties' motions for summary judgment, as enumerated in Appendix I.

/s/
Frederic N. Smalkin
United States Magistrate

Dated: February 27th, 1984

APPENDIX I

Count	Jurisdiction	Recommended Disposition	R/R Text Ref. (Part)
I. Union by-laws in violation of Title VII	Title VII, 42 U.S.C. S 2000e-2	Plaintiff's motion denied; Defendants' motions granted. No trial Necessary.	II

II. Conspiracy to deprive plaintiff of his right to equal protection of the law	42 U.S.C. S 1985(3)	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	V
III. Failure to prevent S 1985 violations	42 U.S.C. S 1986	Plaintiff's motion denied: Defendants' motions granted. No trial necessary	V
IV. Deprivation of plaintiff's right to equal protection of the law	42 U.S.C. S 1981	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	IV
V. By-pass of plaintiff for employment due to his national origin	Title VII, 42 U.S.C. S 2000e-2	All parties' motions denied. Trial necessary	II
VI. Discrimina-	Title VII, 42 U.S.C.		

tion against plaintiff for his opposition to the Defendants' employment practices	S 2000e-3 1. job by-pass	All parties' motions denied. Trial necessary.	II
	2. "share the work" agreement	All parties' motions denied. Trial necessary.	II
	3. dues payment dispute	Plaintiff's motion denied. Defendants' motions granted. No trial necessary.	II
	4. Elimination of substitute jobs	Plaintiff's motion denied. Defendants' motions granted. No trial necessary.	II
VII. Failure to post provisions of Civil Rights Act	Title VII, 42 U.S.C. S 2000e-10	Plaintiff's motion denied. Defendants' motions granted. No trial necessary.	III

VIII. Breach of Contract; Breach of Duty of Fair Representation	S 301 of the Taft-Hartley Act, 29 U.S.C. S 185(a)	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VI
IX. Breach of the Fiduciary Duty to plaintiff	Common Law Quasi Contract	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VIII
X. Punishment of plaintiff for his objections to employment practices	LMRDA, 29 U.S.C. S 411(a) (1) & (2)		
	1. Abridgement of plaintiff's voting rights on the "share the work" agreement	All parties' motions denied. Trial necessary.	VII
	2. elimination of substitute jobs	Plaintiff's motion denied; Defendants' motions granted.	VII

		No trial necessary.	
	3. job by-pass	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII
	4. dues payment dispute	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII
XI. Illegal provisions in Union by-laws	LMRDA, 29 U.S.C. S 411(a)(4)	All parties' motions denied. Trial necessary.	VII
XII. Improper discipline procedures against plaintiff	LMRDA, 29 U.S.C. S 411(a)(5)	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII
XIII. Failure to post provisions of LMRDA	LMRDA, 29 U.S.C. S 415	Plaintiff's motion denied; Defendants' motions	VII

		granted. No trial necessary.	
XIV. Improper disciplining of plaintiff	LMRDA, 29 U.S.C. S 529	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII
XV. Failure to compensate plaintiff for services rendered	Common Law Quasi-Contract	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VIII
XVI. Employment Discrimination by arbitrary classification of substitute workers	Title VII, 42 U.S.C. S 2000e-2		
	1. job by-pass	All parties' motions denied. Trial necessary.	II
	2. "share the work" agreement	All parties' motions denied. Trial necessary.	II

UNITED STATES DISTRICT COURT
208 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691
FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE
TELE: (301) 962-3840
FTS TEL: 922-3840

March 20, 1984 (entered March 22, 1984)

Edward J. Makowski, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Re: Rajaram v. ITU, et al.
Civil No. B 80-0012

Dear Mr. Makowski

I have received and reviewed your request for reconsideration of my Report and Recommendation of February 27, 1984. Although, in large measure, your request simply restates arguments that I fully considered, yet rejected, there are several points you raised that should

specifically be addressed, in the interests of throughness.

First, in Part II of my Report and Recommendation, I determined that plaintiff's Title VII claim concerning illegal provisions in the Union by-laws was barred because plaintiff is bound by the consent agreement among the EEOC, ITU, and Sun Chapel. Adams v. Proctor & Gamble Mfg. Co., 697 D.2d 582 (4th Cir. 1983) holds that if a charging party chooses not to intervene in an EEOC action, then he will be held to have placed the conduct of the litigation entirely in the hands of the EEOC and to have expressed a conclusive willingness to be bound by the outcome. 697 F.2d at 583. The statutory scheme requiring both exhaustion and the vigorous pursuit of rights at the administrative level is meant to encourage active efforts, by all parties involved, to settle the dispute

at the administrative level. Plaintiff's actual intent and personal opinions regarding the lack of efficacy of the EEOC procedures and the "weakness of the Commission" cannot be used to circumvent this statutory scheme. Adams clearly places an onus on the charging party to pursue his claim vigorously and to guard his rights at all levels, not simply in the forum that he chooses. For this reason, plaintiff is clearly bound by the consent decree as to the defendants ITU and Sun Chapel.

However, as you correctly note, defendants BTU-12, Poist, and Kidwell were not parties to the consent agreement. This fact has, though, no determinative effect. The Title VII claim concerning the Union by-law provisions cannot be asserted here because plaintiff failed to exhaust his administrative remedies with the EEOC

pursuant to 42 U.S.C. Section 2000e-5. Plaintiff's charge with the EEOC named, as discriminating parties, only Sun Chapel and ITU; he never filed a charge against BTU-12, Poist, or Kidwell. It is true that the courts do not hold EEOC charges

to the tests of common law pleadings, in that the EEOC can expand the charges made against a specific defendant based on its investigation. EEOC v. General Electric Co., 532 F.2d 359 (4th Cir. 1976). However, the courts do require that a specific defendant be named in the EEOC charge. See Freeman v. Schultz, 468 F.2d 120 (D.C. Cir. 1972). Because plaintiff never filed administrative charges against BTU-12, Poist, and Kidwell with the EEOC, and thus never afforded them an opportunity to assert their defenses in

the administrative forum, plaintiff's Title VII claim concerning the Union by-law provisions is not now actionable in this forum.

Second, in Part II of my Report and Recommendation, I determined that plaintiff's Title VII claim concerning the retaliatory elimination of substitute positions was barred because plaintiff failed to exhaust his administrative remedies. Plaintiff seeks to avoid the exhaustion requirement, alleging that his failure to follow the statutory procedures was due to misleading acts by the Union (BTU-12), i.e., publishing a story in its bulletin stating that the matter had been settled by arbitration and that awards would soon be made. Contrary to plaintiff's allegations, however, this statement by the Union was not misleading; when made, it was true. When A.S. Abell decided not to recognize

the substitute positions after the collective bargaining agreement ended in December, 1976 (in apparent disregard of an oral agreement to continue the terms and conditions of employment until a new contract was finalized), the Union filed for and won arbitration on this issue; the affected employees were to be paid the difference between what they earned and what they would have earned had they been permitted to retain their temporary situations up to January 1, 1977. (Keys [sic] Affidavit, p. 6.). After this award the newspaper refused to reinstate the temporary situations. Despite grievances and a charge filed with the NLRB, the Union could not enforce compliance with the arbitration awards, and the NLRB refused to issue a complaint and dismissed the charge because there was no arbitration clause in the contract. Id. Because there was no

misleading act on the part of the defendants, plaintiff cannot avoid the exhaustion requirements of Title VII, and thus his "retaliatory elimination of substitute positions" claim is not actionable.

Third, in Part V of my Report and Recommendation, I determined that plaintiff's claims under 42 U.S.C. Sections 1985 and 1986 were not actionable. First to clarify a fact discussed in my

Report and Recommendation, you are correct in noting that, although substitute positions were not officially recognized by A.S. Abell after December, 1976, substitutes continued to work after that month, and the substitute positions were not formally abolished until the adoption of the July, 1978 collective

bargaining agreement. Second, my analysis of plaintiff's Section 1985 claim was inadvertently limited to allegations concerning the end of substitute work. Conceivably, plaintiff could also raise this claim with respect to the job by-pass, "share the work" agreement, and illegal provisions in the Union by-laws. However, regardless of the factual bases of plaintiff's Section 1985 claim, there is a threshold requirement that a conspiracy existed, and there must be at least minimal factual support for the existence of a conspiracy. In the absence of specific allegations this claim cannot stand. See Yarbrough v. Illinois Department of Mental Health, 538 F. Supp. 414, 416 (D. Ill. 1982). Plaintiff's conclusory asseverations that the defendants "consulted" and "concurred in an agreement" and that they each failed to

advise plaintiff of his grievance rights (beyond the Union grievance procedures) are simply insufficient factual bases to support the allegation of a conspiracy.

In addition, under the explicit terms of Section 1986, if there is no Section 1985 claim, there cannot be a claim under Section 1986. Therefore, my prior decision concerning plaintiff's Section 1986 claim is also unchanged.

Fourth, in Part VII of my Report and Recommendation, I determined that your claims under the LMRDA, 29 U.S.C. Sections 411(a)(5) and 529, concerning allegations that the Unions employed improper disciplinary procedures against plaintiff, were not actionable. As a factual clarification, you are correct in noting that plaintiff did not limit the basis of his complaint to the elimination of substitute positions. Plaintiff also asserts that he was illegally disciplined

by the job by-pass, "share the work" agreement, and the Unions' continued failure to seek work for him after the adoption of the July, 1978 collectiver bargaining agreement. As was noted in my Report and Recommendation, at p. 15, all claims stemming from incidents in 1976 are barred by the three year statute of limitations. With respect to the post-1976 claims, "discipline" as a term of art refers to retaliatory actions that affect a union member's rights or status within the union. Finnegan v. Leu, 456 U.S. 431, 437 (1982). Plaintiff has not alleged any facts in support of his contention that the defendants' actions were

retaliatory in nature. The "share the work" agreement may have been implemented contrary to the Unions' standard

operating procedures, but there is no evidence to show that the agreement was a retaliatory act aimed at the plaintiff. Similarly, plaintiff may feel it unfair that he trained for four years for a job that was eliminated with the end of the 1976 collective bargaining agreement. However, the evidence indicates that, rather than attempting to retaliate against the plaintiff, the Union tried to preserve all of the workers' rights as they existed under the expired collective bargaining agreement. (See Keys [sic] affidavit, pp. 6-8). You correctly note that the $1,500 received by plaintiff did not represent payment under the arbitration award (as I had mistakenly referred to it in my Report and Recommendation, at p. 19), but rather was a severance payment for the substitutes whose job were eliminated by the July, 1978 collective bargaining agreement.

However, it is still a fact that the Union negotiated this payment for the substitutes--including the plaintiff--and that plaintiff accepted this money. Thus, my conclusion remains unchanged, i.e., that there is no evidence to show that the loss of substitute work was the result of any retaliatory act by the Union against the plaintiff.

In summation, I have amended my factual findings as provided herein. However, the recommended dispositions, as set forth in my Report and Recommendation, remain the same. With respect to the remaining contentions raised in your recent filing, but not expressly treated above, there is, in my judgment, no merit in your position, for the reasons discussed adequately in my Report and Recommendation. I understand that you intend to file additional material for Judge Black's consideration,

and that he will prescribe the schedule to govern such filing. A copy of this letter will be filed in the official court file, and will serve to supplmeent (sic) my Report and Recommendation of February 27, 1984.

Very truly yours,

/s/
Frederic N. Smalkin

FNS/skp

cc Honorable Walter E. Black, Jr.
Bernard W. Rubenstein, Esquire
Ronald Rosenberg, Esquire
Court File

UNITED STATES DISTRICT COURT
208 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691
FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE
TELE: (301) 962-3840
FTS TEL: 922-3840

March 27, 1984

(not entered)
(in the)
(docket sheet)

Phillip Mizrach, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Re: Rajaram v. ITU, et al.

Civil No. B 80-0012

Dear Mr. Mizrach:

This will respond to your letter of March 26, 1984, with its enclosure consisting of a copy of Mr. Rajaram's EEOC charge of discrimination dated August 30, 1978.

Despite your argument to the contrary, I am still of the opinion that

the charge of discrimination in that document was filed only against the two unions listed as defendants therein, that is, Sunpapers Chapel of BTU-12 and the International Typographical Union. The fact that other individuals or organizations were mentioned in the "particulars" section of the EEOC charge does not indicate that they were intended to be defendants before the EEOC. Indeed, the EEOC did not treat them as such, limiting its inquiry to the action of the defendant unions as listed on the charge of discrimination.

It is quite natural that various individuals were mentioned in the "particulars" section, in that an association such as a union can act only through the actions of individuals. However, the mere mention of those individuals' names is not sufficient to constitute them EEOC defendants.

Your argument to the contrary from the wording of the form is unconvincing. Although the form calls for multiple defendants to be listed "below," there is no such listing in the "Particulars" section of the form. In other words, there is no listing of individuals in the "particulars" section, giving their addresses and other data as called for in the "Defendant" section of the form. Furthermore, the word "Continuing" on the form has no reference to a continuing listing from the top to the bottom part of the form, but, rather, clearly refers only to the duration of the alleged discrimination.

For the reasons stated, I am still of the opinion that the EEOC charge was lodged only against the Sunpapers Chapel of BTU-12 and the International

Typographical Union.

Very truly yours,

/s/
Frederic N. Smalkin

FNS/skp

cc Honorable Walter E. Black, Jr.
Bernard W. Rubenstein, Esquire
Ronald Rosenberg, Esquire
Court File

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, Plaintiff

v. FEB 15 1985

INTERNATIONAL TYPOGRAPHICAL

UNION, et al., Defendants

CIVIL No. B-80-0012

ORDER

Upon consideration of the parties' Exceptions and Objections to the Report and Recommendation of the United States Magistrate, and the responses thereto, and having heard the respective oral arguments of all interested parties, at a hearing on February 13, 1985; in accordance with the Court's oral opinion rendered at the conclusion of oral argument, it is, this 15th day of February, 1985, ORDERED:

1. That Plaintiff's Exceptions and Objections to the Report and Recommendation BE, and the same hereby

ARE, OVERRULED;

2. That summary judgment for defendants BTU-12, Jack Poist and Gary Kidwell, with respect to Plaintiff's Title VII claim concerning the Union by-law provision BE, and the same hereby IS, GRANTED;

3. That Defendants' Exceptions and Objections to the Report and Recommendation in all other respects BE, and the same hereby ARE, OVERRULED;

4. That the recommended disposition in Magistrate Smalkin's Report and Recommendation of February 27, 1985 (sic) BE, and the same hereby IS, ADOPTED IN ITS ENTIRETY; and

5. That the Clerk of Court shall mail copies of this Order to counsel for the parties.

/s/
Walter E. Black, Jr.
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

KONDIAN R. RAJARAM,

PLAINTIFF,

-v-

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
SUNPAPERS CHAPEL OF BALTIMORE
TYPOGRAPHICAL UNION NO 12;
JACK POIST, GARY KIDWELL and
A.S. ABELL PUBLISHING COMPANY,

( ) (sic)

Case No. B80-0012

Baltimore, Maryland

April 15, 1987 (entered February 5, 1988)

TRANSCRIPT OF ORAL OPINION

BEFORE THE HONORABLE WALTER BLACK, JR.

A P P E A R A N C E S:

For the Plaintiff:

EDWARD MAKOWSKI, ESQUIRE

PHILLIP MIZRACH, ESQUIRE

For the Defendants:

BERNARD RUBENSTEIN, ESQUIRE

BRIAN A. POWERS, ESQUIRE

Audio Operator:

VERONICA J. CAMERON

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J & J COURT TRANSCRIBERS
20 Florister Drive
Trenton, New Jersey 08690
(609) 586-4345/586-2311

COURT CLERK: Please rise. Oh yea, oh yea, oh, yea. All persons having business before the United States District Court for the District of Maryland draw near and give your attention. This Honorable Court is now in session. The Honorable Walter E. Black, Jr., presiding.

THE COURT: Good morning.

THE AUDIENCE: Good morning, your Honor.

THE COURT: As I indicated at the end

of the trial day yesterday, it was my intention to have the opportunity to review this matter and rule on it this morning and I'm now prepared to do so. I will do it by means of an informal oral opinion, reserving the right to edit that opinion if it's transcribed for any reason, without in anyway changing the result or any type of meaning.

This law suit was filed on January 4, 1980. Its procedural history is extremely complicated and need not be recited here. The case is being heard by this Court as trier of fact and consists of five of the original sixteen counts of the Second Amended Complaint (Page [sic] 53).

Repeated attempts by the plaintiff to amend the Second Amended Complaint and to reopen claims dismissed long ago were both unsuccessful and sometimes frivolous. A basic summary of the counts

being tried is as follows. Counts 5 and 16 alleged discriminatory practices under 42 U.S.C. 2000(E)(2) (sic) of the Civil Rights Act which prohibits labor organizations from discriminating against a union member or from classifying or failing or refusing to refer for employment a union member because of his "race, color, religion, sex or national origin." 42 U.S.C. Section 2000(E)(2)(C)(1) and (C)(2). (sic)

Count 6 alleges discrimination under 42 U.S.C. Section 2000(E)(3)(A) (sic) of the Civil Rights Act which prohibits an employer from discriminating against an individual for opposing any unlawful employment practice or for making charges, testifying, assisting or participating in enforcement proceedings brought under the Civil Rights Act.

Counts 10 and 11 are for violations of the Labor Management Reporting and

Disclosure Act, and alleged, respectively that the plaintiff was punished for objecting to certain labor practices of the defendants and that the plaintiff was illegally required to spend two years in presenting grievances through union procedures.

The plaintiff in this case, Kondian Rajaram, was born in India and immigrated to this country in the 1960's. Having examined the various groups protected by the Civil Rights Act, the Court is satisfied that the proper characterization of the discrimination alleged in this case is discrimination based on the plaintiff's national origin. The Court also notes in this regard the plaintiff's name, skin color and accent, all factors which support the fact that the plaintiff was of foreign ancestry.

Further, the Court notes that an individual born in India is characterized

as a caucasian and therefore the discrimination alleged here cannot be based on the plaintiff's race. The plaintiff is now a citizen of the United States and has made his home in this country.

Early in the 1970's, after completion of four years of technical education and training, the plaintiff became a journeyman in the printing industry. The defendants represent the hierarchy of union organizations and selected officials within the printing industry; namely the International Typographical Union, the ITU, the Baltimore Typographical Union Number 12, the BUT-12, (sic) the Sunpapers Chapel of the Baltimore Typographical Union Number 12, called the Sunpapers Chapel, Jack Poist, then Chapel Chairman and Gary Kidwell, then Vice-Chairman.

Defendants initially raised a

technical argument regarding the exact named defendants in the original charging document but the Court does not find it necessary to address this issue and, in any event, finds that all of the defendants have had proper notice of the charges alleged in this lawsuit.

The case of Rajaram versus ITU, et al., Civil No. B80-00012 (sic) was finally heard by this court over seven years after it was filed and over ten years since the first incident of wrongdoing alleged in the complaint. After a week of often repetitive testimony, including nearly twelve hours of direct testimony of the plaintiff, and after the presentation of often cumulative and irrelevant evidence, the plaintiff rested its (sic) case.

The defendants immediately moved to dismiss the entire action under Federal Rules of Civil Procedure, Rule 41(b).

Rule 41(b) provides that a defendant in a case tried without a jury may move for dismissal at the close of the plaintiff's evidence on the ground that upon the facts and teh (sic) law, the plaintiff has shown no right to relief. The court as trier of the facts, may then determine the facts and the law and render judgment against the plaintiff if warranted. Unlike a motion for directed verdict, the court is not required to make any special inferences in favor of the plaintiff.

Instead, the court is to weigh the evidence presented, resolve any conflicts in it and decide for itself where the preponderance of evidence lies. 9 Wright & Miller Section 2371 at p. 224. A thorough review of the entire record in this case in combination with the evidence presented to the Court over the past week, convincingly demonstrates to this Court that there is no evidence to

support any of the allegations made by the plaintiff against these defendants. As the Court will grant the defendants (sic) motion to dismiss in this case, it must now set forth its findings of facts and conclusions of law. Federal Rules of Civil Procedure, Rule 52(a).

After becoming a journeyman printer, Rajaram moved to Baltimore, Maryland to seek employment as a proofreader. He was hired in 1974 by the A.S. Abell Publishing Company, who was originally named as a defendant in this action, but who was thereafter dismissed for limitations reasons. Though there were no permanent positions with A.S. Abell, Rajaram was hired as a substitute with the understanding that he would work when needed, and eventually move up until a permanent situation became available. When Rajaram was hired, he signed his name in a logbook which established his

priority/seniority as among the other hires.

One of the ways in which a substitute could work at A.S. Abell was to take the place, temporarily, of a permanent employee who became ill or was absent from work for any reason. These temporary situatüions (sic) were know (sic) as TF's. Substitutes could be assigned to the TF positions in various ways. Among the methods of assignment were by direct request of a permanent situation holder or by showing up at a particular shift and then being chosen based on priority or a lottery-type draw system. Each substitute was required by the union laws to show up two or three times a week, in order to maintain their priority.

From 1974 until the summer of 1976, Rajaram worked as a substitute at A.S. Abell without incident. In July or

August of 1976, Rajaram became aware of a long-term TF of a permanent employees (sic) named Fleisig. Rajaram thought the TF would become available in the Fall of 1976. By that time, Rajaram had worked his way up the list of priorities so that he was relatively certain that he could claim the Fleisig TF.

In anticipation of the long-term assignment, Rajaram planned a lengthy trip to his homeland of India. Plaintiff testified that the purpose of the trip was to get married. The Court finds that the plaintiff did, indeed, get married while in India, but the Court also finds that Rajaram may have taken the trip for other purposes as well, for exsample, to visit a sick relative, and that the union officials reasonably believed the trip included such reasons.

As the trip to India was to last over a month, Rajaram knew that such an

absence would jeopardize his priority position and therefore he sought to pay his union dues in advance. Non-payment of dues is the only way a union member can be lawfully expelled from a union and is one of the ways that a member could lose priority status in the typographical union. In this regard, Rajaram approached defendant Kidwell and requested to pay his dues in advance.

After a few moments hesitation and some discussion probably heated, Kidwell accepted the dues and issued a receipt to Rajaram. The incidents that are the subject of the discrimination and retaliation counts in this case occurred after Rajaram's return from India but are alleged to stem in part from this dues altercation believed by the Court to be nothing more than a trivial and minor incident between Kidwell and Rajaram.

For the sake of simplification, the

Court will address each Count of the Second Amended Complaint in turn beginning with Count 5, which alleges discriminatory actions by the defendants based on plaintiff's national origin. To avoid an immediate dismissal in this case, the plaintiff had to present sufficient evidence to establish a prima facie case. Absent direct evidence of discriminatory treatment, which clearly is not present in this case, those elements required. (sic) the (sic) plaintiff in this case to show: (1) that he was a member of the protected class, (2) that he was qualified for the job assignment; (3) that despite his qualifications, he was not given the job assignment and (4) that, after he was by-passed for the job, the assignment remained open or was given to another individual with similar qualifications. See, for example McDonnell-Douglas Corp.

v. Green, 411 U.S. 792 (1973); Smith v University of North Carolina, 632 F.2d 316 (4th Cir. 1980).

Assuming that the plaintiff did establish a prima facie case of discrimination, the burden of going forward then falls on the defendants to dispel the inference of discrimination raised by the plaintiff by demonstrating legitimate and non-discriminatory reasons for its actions. Citing, McDonnell Douglas, at p. 803.

The plaintiff in turn can rebut by exposing such reasons as pure pretext or subterfuge. Ultimately the establishment of a prima facie case of employment discrimination requires proof by a preponderance of the evidence that the plaintiff was not promoted or dismissed "under conditions which, more likely than not, were based upon impermissible racial considerations." Young v. Lehman, 748 F.

2d. 194, 196 (4th Cir. 1984).

The evidence in the record falls far short of proving either pretext or discrimination. As presented by the plaintiff, the evidence merely supports the existence of a clearly legitimate and non-discriminatory reason for the by-pass of plaintiff regarding the Fleisig TF.

When the plaintiff returned from India in October of 1976, he returned to work as a substitute for A.S. Abell. He did not apply or claim TF positions that surfaced at that time and instead quietly waited for the Fleisig TF to become available. The Court finds that the defendants' reasonable belief at that time was that Rajaram did not request the TF's for personal reasons.

Throughout this period of time, Rajaram protested night work because of health problems and fatigue due to his trip and necessary readjustment to the

United States. There is even some testimony by the union officials that Rajaram had problems sleeping during the day because of a baby crying, though Rajaram subsequently produced evidence that he did not have a baby at that time.

The Court finds that any discrepancy about plaintiff's position regarding his refusal work (sic) nights or failure to claim the TF's is due to his lack of candor with the union officrs (sic) and not because of any bad faith or fabrication on the defendants part.

Consequently when the Fleisig TF did became (sic) available in November of 1976, the Court finds that the union officials reasonably believed that Rajaram would not want the TF because it, too, was a night shift and the union officials were not aware that Rajaram had changed his mind in this regard.

Rajaram was not assigned to the TF

and it has been stipulated by the defendants that Rajaram was the highest priority substitute and was qualified for the position. Instead, another substitute, Lorenzo, with lower priority than Rajaram, began work on the Fleisig TF on Sunday, November 4, (sic) 1976. Earlier that day Rajaram vehemently objected to the assignment at a Chapel meeting.

When the mistake was uncovered, the TF was re-assigned to Rajaram. Rajaram could not begin work until the following week, however, due to a policy of not taking a substitute off of a TF during the middle of the financial workweek. Rajaram did work at other positions during the week of November 14, but it was established by comparison with the workweek of Lorenzo that Rajaram missed one and perhaps two days of work because of the by-pass, for a maximum loss of

less than $120.

It is this by-pass episode the plaintiff specifically contends constitutes an unlawful practice of the defendants by "limiting and depriving the plaintiff's employment opportunities because of his race, color and national origin." The entire circumstances of the incieent (sic) do not bear out such an interpretation. The Court finds that the by-pass was nothing more than an innocent ( ) (sic) on behalf of the union officials. The union officials were called to testify during the plaintiff's case and the Court finds credible the explanation of the union officials that they believed Rajaram did not want the night shift TF position. A legitimate and non-discriminatory purpose has been established and the plaintiff has not rebutted it by showing pretext. The Court finds no evidence of

discrimination.

Count 5 is couched in broad language and the plaintiff argued during trial that the discriminatory practices of the defendants under Section 2000(E)(2), (sic) included not only the by-pass incident, but other situations as well. First, plaintiff alleges that the initial and momentary hesitation of Kidwell to accept an advance payment of dues in August 1976 constituted discrimination based on Rajaram's national origin.

As stated earlier, the Court finds this incident so trivial it hardly bears discussion. Further, the argument that this was the first incident of discrimination alleged by the plaintiff because this was the first ( ) (sic) the defendants learned of Rajaram's national origin is so silly that the Court need not discuss it. Suffice it to say, that they (sic) Court finds no

discrimination regarding the dues incident.

Two other incidents occurring after the by-pass must be given context before the Court can discuss whether any discriminatory ( ) (sic) exists.

Soon after Rajaram began work on then (sic) Fleisig TF, John Banach, an officer of the A.S. Abell Publishing Company sent a letter to the union informing them that various TF positions were being eliminated. The fact that Rajaram's name was not on the list was more likely than not an oversight and was not, in any event, discrimination by the Union and the union officials. Other TF positions were left off the Banach letter as well and, furthermore, the action taken was by the A.S. Abell Company and not these defendants.

When Poist called to verify the letter and seek an explanation on behalf

of the union members, he was told that all of the TF positions were being eliminated and Poist took this to mean the Fleisig TF as well. The real reason for the elimination of TF's, however, is what is crucial here.

A.S. Abell had automated and computerized its company in accordance with new technology in the printing industry and the manpower supplied by the substitute program was just nob (sic) longer needed. The existence of a technologicaal (sic) revolution within the printing industry can hardly constitute discrimination against Rajaram when it equally affected all members situated like Rajaram. The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not before this Court.

Plaintiff has alleged one final incident against the defendants claimed to constitute a discriminatory limitation and deprivation of plaintiff's employment opportunities because of his national origin. In January of 1977 through February of 1977, a share of the work agreement was in affect among the union members. The Court remains unsure of how exactly the share of the work agreement operated. Poist testified during the plaintiff's case that the share of the work agreement was set up because of the new technology and consequent lack of work for the union members. It was founded on the idea of unionism or helping your brother or sister member because of the decrease in manpower needs.

Apparently a group of members got together and decided to share the wrok (sic) so that if a substitute worked on a

given day he was to give up the right to work the next day unless there were more than enough positions available.

Rajaram was not aware of the share of the work program until Janjary (sic) 19 when he sought assignment of a temporary position by the lottery method, that is, by drawing a number where high number would be given the assignment. Plaintiff contends that he was not allowed to draw and therefore lost job opportunities notably on that day.

At the outset, the Court finds credible Poist's testimony that as Chapel Chairman he never used the lottery or draw method of assignment. Further, a close examination and comparsion (sic) of the work schedules of all the substiitutes (sic) during the relevant periods in January and February do not reflect a discriminatory method of work assignment.

Rajaram was not affected any more or any less than the other substitutes if, indeed, he was affected at all. Rajaram worked successive days and he worked a substantial amount during tha (sic) time. Further, the Court finds that the defendants (sic) reasons for instituting the share of the work system are not only legitimate and non-discriminatory, but laudatory in light of the circumstances regarding the new technology and its tragic affect on the union members.

Finally, when Rajaram objected to the share of the work agrrment, albeit after he evaluated its effect on his own work schedule, the system was abandoned., The Court finds that the share of the wrok (sic) agreement was neither invented by the defendants to discriminate against Rajaram, nor did it have a discriminatory affect on Rajaram.

For all of the above reasons, Count

5 of the Second Amended Complaint must be dismissed.

Count 6 of the Socond Amended Complaint states simply that the defendants discriminated against the plaintiff "because he opposed their unlawful employment practices and policies." The plaintiff alleges, in essence, that the four incidents addressed above were in retaliation for the incidents preceding each one. Obviously, the dues incident was not retaliatory. Plaintiff contends, however, that the job by-pass was in retaliation for plaintiff's insistence upon advance payment of dues and objection to Kidwell's resistence to such payment.

Section 2000(E)(3) (sic) of the Civil Rights Act is couched in terms of discrimination for opposing unlawful employment practice or opposing any

unlawful employment practice or for charging, testifying, assisting or participating in any manner in an investigation, proceeding or hearing brought under the Civil Rights Act. Clearly, the dues incident does not rise to the level of opposing an unlawful employment practice under 2000(E)(3) (sic) and, therefore, the by-pass was not retaliatory.

Furthermore, the Court finds that Kidwell hesitated before accepting payment after explaining to Rajaram that it was difficult to calculate the sum of an advance payment because payment of dues is prorated with the employees (sic) weekly or monthly salary. This fleeting disagreement occurred on the working room floor and not in Kidwell's office and it was inconvenient to accept the dues at that time. Nevertheless, upon Rajaram's insistence the dues were accepted.

The termination of the Fleisig TF while Rajaram occupied it, was not retaliatory because it affected all substitutes equally and its purpose was to make way for advanced technology and not to retaliate against a single substitute because he earlier objected to being by-passed for a job position that was quickly rectified in any event.

Finally, the Court finds that the share of the work agreement was not in retaliatioln (sic) of any of the preceding three incidents. The dues incident amounted to a forgettable disagreement between Kidwell and Rajaram and the reason underlying the termination of the TF positions is obvious.

In regard to the by-pass, the union officials allegedly responsible for the share of the work agreement were also those who believed that the by-pass incident had been remedied and all but

forgotten. The idea that such an elaborate work arrangement was set up to retaliate for Rajaram's objection to the by-pass is illogical. Once Rajaram was reinstated in the Fleisig TF, no further complaints were made until February 19, 1977, over a month after the share of the work agreement was instituted.

The Court finds that the union officials did not retaliate against Rajaram's objection that they long thought it was resolved. In Ross v. Communications Satellite Corporation, 759 F.2d. 355 (4th Cir. 1985), the Fourth Circuit set forth the principles for determining whether an employee has established a prima facie case of retaliationl. (sic) The three elements include: (1) that the employee engage in protected activity; (2) that the employer took adverse employment action against the employee and (3) that a causal

connection existed between the protected activity and the adverse action. Citing Ross, at p. 365.

Plaintiff not only failed to establish that the share of the work agreement constituted an adverse employment action against him, but in no way will the evidence support a causal connection between the dues incident, the by-pass, the termination of TF's and the share of the work agreement. Count 6 of the Second Amended Complaint is, accordingly, dismissed against all of the defendants.

Count 16 of the Second Amended Complaint avers that the defendants, and specifically Poist "arbitrarily and unlawfully classified the Sunpapers Chapel substitute employees into groups to further the practice of employment discrimination. The Court first finds that in regard to the by-pass,

there was no classification under any plausible defintion (sic) of that term. And, neither the plaintiff nor the defendants nor the Court can articulate such a classification. Accordingly, the claim that the by-pass constituted employment discrimination by arbitrary classification of substitute workers, has no merit whatsoever.

Neither could the plaintiff explain to the Court the arbitrary classification of substitutes with regard to the share of the work agreement. Plaintiff initially suggested substitutes were placed into groups based on the day shift, night shift classification. Rajaram, however, worked both day and night, both during the relevant period and before it. Plaintiff suggested that the classification perhaps changed each shift in order to affect Rajaram.

The Court is unable to come up with

a classification that the plaintiff, Rajaram, or the other substitutes were arbitrarily placed into it and plaintiff could not either. Section 2000(E)(2)(C)(2) (sic) does not purport to ban all discrimination, but only the spedific forms enumerated by its provisions, namely, race, color, religion, sex or national origin. See, for example, King v. Seaboard Coast Line Railroad Company, 538 F.2d 581 (4th Cir. 1976).

In the King case drunks were held not to be a classification protected by Title 7 (sic) and in this case a classification into day or night substitutes, if that is the arbitrary classification alleged, is equally not actionable.

Count 16 is symptomatic of the lack of substance in the entire complaint. Seven years after the complaint was

filed, the plaintiff could not articulate what was the arbitrary and discriminatory classification that the plaintiff found so offensive. Count 16 will, likewise, be dismissed for failure to demonstrate a right to relief.

The lack of evidence of any discrimination is forcefully established from the plaintiff's answer to the final question on direct examination in which he expanded for approximately twenty minutes on his complaint against the union, based almost entirely on alleged procedural minimal violations of union work law and mentions discrimination only once, obviously as an after thought.

Apart from the findings above, the Court further finds that the defendant ITU, in contrast to the local unions and its officers, had no contact whatsoever with the various incidents discussed above and should not, under any

circumstances, be a named defendant in Counts 5, 6 and 16.

The two remaining causes of action in this case fall under the Labor Management Reporting and Disclosure Act. 29 U.S.C. Section 401-531. The LMRDA was enacted, inter alia "to eliminate or prevent improper practices on the part of labor organization." Section 401(C).

Count 10 alleges that the defendants abridged the plaintiff's voting rights regarding the share of the work agreement. Section 411 of the LMRDA provides for equal rights and privileges to vote in certain union matters and establishes the right of a union member to express his views regarding union business.

Paramount to a finding that the plaintiff's voting rights were abridged is a finding that there was a vote. Poist testified that there was no such

vote and that the share of the work agreement was nothing more than an informal agreement among several of the substitutes. Rajaram testified that Poist told him that there was a vote but that Rajaram did not believe there was a vote. There is no evidence there was a vote and indeed plaintiff's counsel concedes that that (sic) was no vote as that terms (sic) is commonly defined.

The plaintiff continues to press the fact that a union member has the right to vote at an informal gathering of a minority of workers who determine to share their work for the commendable and altruistic reasons described earlier. The Court, however, finds that there was no vote regarding the share of the work agreement and accordingly, there can be no violation of the voting rights protected by the LMRDA.

The last allegation the plaintiff

has alleged is contained in Count 11 of the Second Amended Complaint and states that the plaintiff "was illegally required by all of the defendants to expend approximately two years in presenting his grievances through union procedures before resorting to administrative or court actions which violated the standard set forth by the Bill of Rights of Members of Labor Organizations. The plaintiff is making reference to Section 411(A)(4) (sic) of the LMRDA which prohibits labor organizations from limiting the right of a member to institute an action in court or before an administrative agency, except that the labor organization can require exhaustion of internal procedures not to exceed a four month lapse of time.

There is no question in this case that Section 43 of the Chapel (sic) Laws required a union member to exhaust all of

its internal remedies upon penalty of expulsion and that Section 43 did not expressly limit the exhaustion requirement to the statutory four montsh. (sic) Though the Court notes the defendants' proffer that the questionable by-law is no longer in existence due to a merger of the ITU with a new union, the issue in this case is whether Rajaram was indeed punished or expelled from the union under Section 43.

The Court can find no case law discussing a claim such as that alleged by Rajaram here. Rajaram attempts to state a cause of action for damages becuase (sic) he followed the union grievance procedures to the end rather than take his suit to a court or administrative agency after four months.

Cases analyzing the validity of a by-law that will expel or fine a member for pursuing his court remedies rather

than exhausting his internal rights involve situations where the union member was indeed fined or expelled. Despite tee (sic) multitude and myriad of actions instituted by Rajaram in various forums, he has never been disciplined or otherwise punished for his legal actions. The local union president, Theodore Kees, who testified during plaintiff's case, stated that never in this history of the union has a member been expelled or otherwise punished in this regard. Indeed, Rajaram remains a member in good standing.

The remedies pursued by Rajaram throughout the union procedures also support the Court's finding that there is no causal action under the LMRDA in this case. At the first level of appeal, Rajaram requested the impeachment of Poist and Kidwell and that Poist and Kidwell be required to make compensation

to every TF for damages by their actions. Rajaram also requested that local union President Kees resign from office.

At the next level of appeal, Rajaram wanted the lower adverse decision declared null, void and corrupt. Again, Rajaram requested impeachment of Poist and Kidwell and Kees. He further requested that the lower appellate board be purged and that it cease to exist. Finally, Rajaram requested compensatory damages of $50,000.

Apart from the monetary damages, the political remedies the plaintiff sought against the union were in no way related to his allegations under the Civil Rights Act. Plaintifff (sic) testified that he merely wanted the union to tell him who was right with regard to the incidents discussed earlier. The relief sought by the plaintiff during the union procedures was not within the province of this

Court.

In any event, the Court is satisfied, beyond all doubt that the plaintiff would have pursued his full remedies under the union procedures whether or not the exhaustion requirement existed. The plaintiff's trek through the various appellate procedures provided by the union was meaningful and not perfunctory by any stretch of the imagination.

The Court finds that the litigous (sic) and persistent individual who testified over a period of three days would have certainly availed himself of every legal avenue possible and indeed continues to do so today.

Consequently, any expense incurred by Rajaram throughout the union appellate process would have been incurred by Rajaram in any event. Further, his proffer that his marriage and life was

ruined by this litigation has not been established by any evidence and the link between his divorce iin (sic) 1983 and this by-law in question, in this particular litigation, is so tenuous as to be non-existent.

Count 11 will be dismissed for failure to prove a right to relief under Section 411(A)(4) (sic) of the LMRDA> (sic)

A final word from the Court is appropriate. As a result of certain technological developments in the printing industry, the plaintiff's mean (sic) of livelihood was substantially reduced. For over ten years, plaintiff has been litigating the results of the development before the Union at all levels, before the EEOC and before both the federal and state trial and appellate courts.

The sequence of events began with a

trivial episode involving an alleged slight by a union official in his reluctance to accept a payment of advance union dues. This escalated to an unparalleled assertion of grievances and claims against both his employer and his union. While the Court has known many sore losers during his lifetime, the plaintiff is unique in that he is best characterized as a sore winner.

His efforts to pay his dues in advance were successful within moments. His objection to the by-pass was recognized and the basis of the grievance was rectified within a week, involving a maximum loss of two days' work or $116.20 in wages. His objection to the share of the work arrangement was recognized and the basis of the grievance was rectified within a month with an additional maximum loss of one day's work, or $58.10 in wages.

Even the plaintiff's objection to the alleged illegal by-law has been met as a result of the recent union merger. Nevertheless, the plaintiff, with the enthusiastic assistance of his counsel continues to occupy the attention of at least five courts in a total distortion of our system of justice.

Plaintiff has alleged in this case that his life has been destroyed, as indeed it has, not by any acts of the defendants but by his own all-consuming battle against unfounded conspiracies. I implore the plaintiff to get on with his life and to abandon this never ending vendetta against his employer and his union, if not for the sake of this nations's (sic) and Maryland's judicial system, then for the sake of his own health and peace of mind.

And, I implore the plaintiff's coulnsel (sic) to abandon their quixotic

quest for victory which has led them to act as counsel in a court where they are not qualified to practice under the Rules of court and to drag everyone involved in this trial, including defense counsel, court personnel and the Court itself, down to their level.

Counsel, I will enter an order in conformity with this ruling.

COURT CLERK: Please rise. This Honorable Court now stands in recess.

* * * * * * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

9/9/87 /s/
Date ELAINE HOWELL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM Plaintiff

v.

INTERNATIONAL TYPOGRAPHICAL UNION;

BALTIMORE TYPOGRAPHICAL UNION NO. 12;

( ) (sic)

JACK POIST and

GARY KIDWELL Defendants

CIVIL NO. B-80-0012 (entered April 20, 1987)

O R D E R

Presently pending in the captioned case is Defendants' Motion to Dismiss filed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion to dismiss was filed after the close of the plaintiff's case in the nonjury trial of the captioned case. The Court had the benefit of oral argument on behalf of all parties and is satisfied that upon the facts as presented by the plaintiff in his case-in-chief, and upon

the law, the plaintiff has shown no right to relief.

In accordance with the oral opinion rendered by the Court on April 15, 1987, IT IS, this 16th day of April, 1987, by the United States District Court for the District of Maryland,

ORDERED;

(1) That the Defendants' Motion to Dismiss BE, and the same hereby IS, GRANTED;

(2) That the Second Amended Complaint (Paper 53) BE, and the same hereby IS, DISMISSED in full WITH PREJUDICE; and

(3) That the Clerk shall mail copies herewith to counsel of record.

/s/
Walter E. Black, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Kondian R. Rajaram, Plaintiff

v.

International Typographical Union, et al., Defendants (entered March) (28, 1985)

Civil No. B-84-2465

MAGISTRATE'S REPORT AND RECOMMENDATION

The A.S. Abell Company ("Abell"), the company defendant in this employment discrimination case, filed a motion to dismiss on June 22, 1984.

* * * *

This case involves a dispute based on Rajaram's allegation that defendants failed to perform in accordance with a 1977 arbitration award. In addition, Rajaram alleges a breach of the duty of fair representation with respect to the Union defendants.

* * * *

Rajaram's first case, 80-0012, was filed

in 1980, and that record is voluminous. Although this case, 84-2465 was originally filed in a state court and removed on defendants' motion to this court, it should have been consolidated with 80-0012.

* * * *

For the reasons stated above, I respectfully recommend that, ..., an order be entered granting defendant Abell's motion to dismiss, and dismissing case no. B-84-2465 in its entirety.

/s/
Frederic N. Smalkin
United States Magistrate

Dated: March 28th, 1985

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM,

on behalf of himself and all

others similarly situated

Plaintiff, (entered April) (4, 1985)

v.

INTERNATIONAL TYPOGRAPHICAL UNION, et al., Defendants

CIVIL ACTION NO. B-84-2465

ORDER

Upon consideration ....., it is by the Court , this day of April, 1985,

* * * *

ORDERED, that Magistrate Smalkin's recommended dismissal of Plaintiff Rajaram's claims against the Company Defendants on the ground of res judicata, as set forth in the Report and Recommendation of March 28, 1985, shall be, and hereby is, ADOPTED IN ITS ENTIRETY;

* * * *

Walter E. Black, Jr.
United States District Judge

IN THE CIRCUIT COURT FOR BALTIMORE CITY

KONDIAN R. RAJARAM

vs.

A. S. ABELL PUBLISHING COMPANY

CASE NO.: 84135042/L 20441

REPORTER'S OFFICIAL TRANSCRIPT

April 23, 1986

Baltimore, Maryland

BEFORE: THE HONORABLE JOSEPH H. H. KAPLAN, JUDGE

APPEARANCES:

On behalf of the plaintiff:

EDWARD J. MAKOWSKI, ESQUIRE

On behalf of the Defendant:

JEFFREY P. AYRES, ESQUIRE

REPORTED BY: A. M. GREAVER

Official Court Reporter

* * * *

(at pages 21-24)

THE COURT: And I have heard you all on the merits of the motion to dismiss. I have reviewed the motion to dismiss and

considered the responses to that motion, and I am satisfied that the federal claims and judgments are at issue here and that, because they are at issue here, the federal principles of res judicata and limitations apply.

Even if federal limitations did not apply, state limitations would preclude this cause of action. This lawsuit is barred by federal res judicata principles of claim preclusion. This is because Judge Black's finding of claim preclusion in plaintiff's second federal lawsuit is, itself, res judicata in the case at bar.

The lawsuit, this lawsuit is also barred by federal res judicata principles of issue. This is because of the res judicata effect of final judgments in the plaintiff's two federal lawsuits, both of which held that the plaintiff's claims were barred by limitations and that plaintiff failed to show that A. S. Abell

had fraudulently concealed the 1977 arbitration award.

Even if plaintiff's claims are not barred by res judicata, they are barred by both the federal six month statute of limitations and the applicable state period of limitations. As you both know, in the first federal case, the Fourth Circuit Court of Appeals held that the six month limitation period applied to Taft-Hartley Act violations. Accordingly, this entire lawsuit should be dismissed, notwithstanding the purported class claims.

Under my conclusion that Judge Black's decision in the second federal case, dismissing the case, notwithstanding the purported class claims, binds this Court under the principles of res judicata, and as I have indicated, even if res judicata doctrine does not apply, the purported class is

too small for certification, that is 24 people, and plaintiff cannot adequately represent a class, and no other class members have pursued an interest in this case.

For the foregoing reasons and those set forth in the defendant's motion, the Court will grant that motion to dismiss and dismiss this case.

Mr. Ayres, if you will prepare an order in accordance with my ruling, I will sign it.

MR. AYRES: Yes, Your Honor.

THE COURT: Thank you, gentlemen.

MR. MAKOWSKI: Thank you, Your Honor.

THE COURT: We will stand in recess.

(Proceedings concluded.)

REPORTER'S CERTIFICATE ....

A. M. Greaver
Official Court Reporter

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CASE NO.: 84-135042/L20441

KONDIAN R. RAJARAM, Plaintiff,

v.

A.S. ABELL PUBLISHING COMPANY, Defendant.

ORDER

Upon consideration ...., it is by the Court, for the reasons provided at the hearing of April 23, 1986, this 23rd day of April, 1986,

* * * *

ORDERED, that this entire lawsuit shall be, and ( ) (sic) hereby is, DISMISSED WITH PREJUDICE; and it is further

ORDERED, that Plaintiff's Request for Class Certification shall be, and the same hereby is, DENIED; and it is further

ORDERED, that JUDGMENT shall be, and the same hereby is, ENTERED in favor of Defendant and against Plaintiff on all

claims, on all relief, and with respect to this entire action; ....

JUDGE JOSEPH H.H. KAPLAN
Joseph H. H. Kaplan
Administrative Judge

[[Rule 14.1.(k)(iii)]]

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

July 13, 1990

No. 89-3375

KONDIAN R. RAJARAM Plaintiff-Appellant

v.

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
JACK POIST; GARY KIDWELL

Defendants-Appellees

and

SUNPAPERS CHAPEL OF BALTIMORE
TYPOGRAPHICAL UNION NO. 12;
A.S. ABELL PUBLISHING COMPANY

Defendants

O R D E R

Upon consideration of the appellant's pro se petition for rehearing, IT IS ORDERED that the petition for rehearing is denied.

For the Court,
JOHN M. GREACEN

CLERK

[[Rule 14.1.(k)(v)]]

(Entered February 5, 1988)

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

KONDIAN A. (sic) RAJARAM, Plaintiff,

vs.

INTERNATIONAL TYPOGRAPHICAL UNION, et al., Defendants.

DOCKET NO. B-80-12 (sic)

APRIL 9, 1987

TRANSCRIPT OF TRIAL BEFORE

HONORABLE WALTER E. BLACK, JR.

APPEARANCES:

For the Plaintiff:

EDWARD JACK MAKOWSKI, ESQUIRE

PHILLIP MIZRACH, ESQUIRE

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Baltimore, MD 21231

563-0990

For the Defendant: (sic)

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PATTY L. PARSONS, ESQUIRE

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* * * *

(between pages 3 and 27)

MR. MAKOWSKI: Well, your Honor .... there was an action filed in the State Court which asked that the State Court confirm an arbitration award. There was an action brought in this case, B-80-0012 and Magistrate Smalkin later on in case B-84-2465, which was the -- a case filed at the same time as the case in State Court seeking confirmation and it was moved over the the Federal Court.

Magistrate Smalkin found that he so cited in his report on 2465 that the matter of the arbitration award was part of case B-80-0012, which is the case presently before this Court.

.... However, there was no claim with regard to failure to represent against the union for not enforcing that arbitration award.

* * * *

MR. MAKOWSKI: Your Honor, this -- Magistrate Smalkin found in 2465 that it was, or should have been, part of this case. That --

THE COURT: Well, is it in this case:

MR. MAKOWSKI: According to the report in 2465, it could be in this case and that's why --

THE COURT: It is not.

* * * *

MR. MAKOWSKI: Your Honor, I'm not requesting --

MR. RUBENSTEIN: So what do you want him to do?

MR. MAKOWSKI: Your Honor, I'M not requesting an amendment, I think the Court stated yesterday that this matter of the arbitration was determined in another forum. Which forum? I have looked at the EEOC proceedings; I have looked at the NLRB proceedings; I was involved in the State Court proceedings.

THE COURT: I am sorry, Mr. Makowski, if my inadvertant use of words have caused you all to burn the midnight oil to reconstruct an issue, because I didn't mean it that explicitly. .... I wasn't saying that there was a dispositive ruling on it.

* * * *

MR. MAKOWSKI: I'm telling you that Magistrate Smalkin found that it either was or could have been part of this case.

* * * *

THE COURT: Okay. Well, file a new suit.

MR. MAKOWSKI: We cannot, your Honor --

THE COURT: I only have one chance out of nine of getting it, so file a new suit, Mr. Rubenstein and Mr. Powers can see you again at a later date.

MR. MAKOWSKI: Your Honor, we would like -- Mr. Rajaram would be barred then, his claim could be possibly considered barred for a late file, however, this case would have been timely filed.

* * * *

MR. MAKOWSKI: Your Honor, I would like to offer a copy of Magistrate Smalkin's report in Case B-84-2465.

MR. RUBENSTEIN: Objection.

MR. MAKOWSKI: It is marked as Exhibit Number 84.

THE COURT: Objection sustained.

MR. MAKOWSKI: .... Mr. Rajaram had

vested rights in that and it couldn't be determined until the transcript of the arbitration was acquired by him, that he didn't have standing even to bring the action until the union's time to enforce had elapsed.

* * * *

THE COURT: What matter was not resolved by the NLRB?

MR. POWERS: The arbitration award.

MR. MAKOWSKI: The arbitration matter.